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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103289; File No. SR-LCH SA-2025-005]

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Revisions to its Rule Book and FCM/BD Regulations Related to Clearing Member Testing Requirements

June 18, 2025.

I. Introduction

On April 17, 2025, 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) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b-4[2] thereunder, a proposed rule change to amend its CDS Clearing Rule Book ("Rule Book") and Futures Commission Merchants and Broker-Dealer ("FCM/BD") CDS Clearing Regulations ("FCM/BD Regulations") (the "Proposed Rule Change"). The Proposed Rule Change was published for comment in the Federal Register on May 5, 2025.[3] The Commission did not receive comments regarding 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 registered with the Commission. Through its CDSClear business unit, LCH SA provides central counterparty services for security-based swaps, including credit default swaps and options on credit default swaps. LCH SA is an affiliate of LCH Ltd, through common ownership by LCH Group. LCH SA's ultimate parent company is

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to Revisions to Its Rule Book and FCM/BD Regulations Related To Clearing Member Testing Requirements, Exchange Act Release No. 102955 (Apr. 29, 2025), 90 FR 19020 (May 5, 2025) ("Notice").

London Stock Exchange Group. As a clearing agency registered with the Commission, LCH SA is subject to Commission regulations, including Exchange Act Rule 1004 ("Rule 1004")[4] and Exchange Act Rule 17ad-26(a)(8)(i) ("Rule 17ad-26(a)(8)(i)").[5]

The Proposed Rule Change has two categories. The first provides that each Clearing Member[6] must participate in the testing of LCH SA's business continuity and disaster recovery ("BCDR") plans and LCH's recovery and orderly wind-down ("RWD") plans pursuant to Rule 1004[7] and Rule 17ad-26(a)(8)(i),[8] and the second incorporates the margin adequacy requirements pursuant to Commodity Exchange Act ("CEA") Rule 1.44.[9]

A. Requirement of Clearing Members to participate in testing of BCDR and RWD plans.

LCH SA is proposing to amend the Rule Book[10] to provide that each Clearing Member must participate in testing of LCH's BCDR plans and RWD plans in order to comply with its regulatory obligations pursuant to Rule 1004[11] and Rule 17ad-26(a)(8)(i).[12]

LCH SA already currently engages select participants to assist with functional and performance testing of its Systems Compliance and Integrity ("SCI") systems as part of its overall BCDR program.[13] To ensure that it has the authority to designate select participants to engage in BCDR testing, LCH SA is proposing to specify in its Rule Book that it has the authority to designate participants to assist with BCDR testing in accordance with LCH's

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4 17 CFR 242.1004.

5 17 CFR 240.17ad-26(a)(8)(i).

6 All capitalized terms not defined herein have the same meaning as in the Rule Book in its version as available on LCH SA's website: *https://www.lseg.com/en/post-trade/clearing/clearing-resources/rulebooks/lch-sa#t-over-the-counter-credit-default-swaps*.

7 17 CFR 242.1004.

8 17 CFR 240.17ad-26(a)(8)(i).

9 17 CFR 1.44.

10 LCH SA's CDS Clearing Rule Book can be found on LCH SA's public website: *https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-sa/lch-sa-cdsclear-rule-book-12162024.pdf*.

11 17 CFR 242.1004.

12 17 CFR 240.17ad-26(a)(8)(i).

13 Notice, 90 FR at 19021.

regulatory obligations under Reg 1004[14] and, in LCH SA's opinion, to ensure it can maintain fair and orderly markets in the event that such BCDR plans are activated.[15] In addition to confirming LCH SA's authority to designate participants as described above, LCH SA is additionally proposing to update its Rule Book to clarify that Clearing Members will be required to participate in the testing of its RWD plans if they are designated by LCH to do so. This requirement will be in addition to its authority to designate Clearing Members to participate in default management testing.

Specifically, LCH SA proposes to amend Article 2.2.8.1 of the Rule Book to provide that each Clearing Member must participate in functional and performance testing of the operation of LCH SA's BCDR and RWD plans, in the manner and frequency specified by LCH SA, which it proposes to do with one month's notice via member notification sent by email. LCH SA states that this is necessary to comply with its applicable regulatory obligations. This proposed requirement would be in addition to the existing requirements of Clearing Members to participate in any other technical and operational tests to ensure the continuity and orderly functioning of LCH SA's CDS Clearing Service.[16] New Article 2.2.8.1 provides that each Clearing Member must participate in the testing in the manner and frequency specified by LCH SA. LCH SA stated in the notice that it will require the testing once every 12 months.[17]

LCH SA states that it already has the authority to designate Clearing Members to participate in default management testing as a condition of membership pursuant to its Rule Book, and that the proposed new rule is similar to its existing authority for the purposes of

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14 17 CFR 242.1004.

15 Notice, 90 FR at 19021.

16 LCH Rule Book 2.2.8.1 currently reads as follows: "Each Clearing Member must participate in technical and operational tests, organised reasonably at the discretion of LCH SA, in order, amongst other things, to ensure the continuity and orderly functioning of the CDS Clearing Service."

17 Notice, 90 FR at 19021. *See also* 17 CFR 242.1004(b) (requiring that an SCI entity "[d]esignate members or participants . . . and require participation by such designated members or participants in scheduled functional and performance testing of the operation of [business continuity and disaster recovery plans], in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months).

conducting default management testing.[18] To distinguish the pre-existing requirements from the new requirements, LCH SA proposes to clarify within sub-paragraph (i) of Article 2.2.8.1 that the proposed new rule would not affect LCH SA's existing authority to require Clearing Members to participate in other technical and operational tests, including for purposes of default management.

B. Treatment of Separate Accounts by FCM/BDs

LCH SA is also proposing to revise Regulation 6 of the FCM/BD CDS Clearing Regulations[19] by adding provisions on the treatment of separate accounts by FCM/BDs pursuant to Commodity Exchange Act ("CEA") Rule 1.44, which was promulgated by the Commodities Futures Trading Commission ("CFTC") and, as described further below, allows for separate treatment of certain accounts by Clearing Members for purposes of margin.[20]

LCH SA proposes to amend Regulation 6 of the FCM/BD Regulations to reflect the adoption of Rule 1.44. Specifically, LCH proposes to add a new paragraph (f) related to the withdrawal of Cleared Swaps Customer Funds.

Pursuant to the new paragraph, and under Article 6.2.6.2 of the Rule Book, each FCM/BD Clearing Member must ensure that no Cleared Swaps Customer withdraws collateral from its Cleared Swaps Customer Account (as those terms are defined by CEA Rule 22.1)[21] unless its "net liquidating value," plus any remaining funds in the Cleared Swap Customer's account after the withdrawal, is enough to satisfy the collateral amount required by LCH (under Article 6.2.6.1 of the Rule Book) for all FCM/BD cleared transactions entered into on behalf of that Cleared Swaps Customer. LCH SA defines the term "net liquidating value" by reference to

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18 Notice, 90 FR at 19021.

19 LCH SA's FCM/BD CDS Clearing Regulations can be found on LCH SA's public website: *https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-sa/lch-sa-cdsclear-fcm-bd-cds-regulations.pdf*.

20 17 CFR 1.44.

21 17 CFR 22.1.

Part 39 of the CFTC Regulations.[22]

Additionally, LCH SA proposes to include language in paragraph (f) clarifying that a single beneficial owner can have multiple "Cleared Swaps Customer Accounts" that are treated separately under certain conditions, although each account must still independently satisfy LCH SA's collateral requirements. Specifically, paragraph (f) will note that Cleared Swaps Customers with multiple accounts who make a separate accounts election, and comply with the requirements of CFTC Rule 1.44, are excluded from having all their Cleared Swap accounts considered cumulatively when referring to "Cleared Swaps Customer Account."

LCH SA states that this proposed new rule is appropriate because of the CFTC's adoption of Rule 1.44,[23] which allows FCMs to treat separate accounts of a single beneficial owner as accounts of different legal entities for purposes of the CFTC's margin adequacy requirements.[24] The CFTC rule codifies an earlier CFTC no-action position found in CFTC Letter No. 19-17.[25] LCH SA therefore also proposes to remove references to this CFTC Letter from paragraph (e) of Regulation 6 of the FCM/BD Regulations, because it is now superceded by Rule 1.44, and to consequently renumber the paragraphs of Regulation 6 while updating any cross-references in the FCM/BD Regulations.

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.[26] Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued

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22 *See* 17 CFR 39.13(g)(8)(iii).

23 17 CFR 1.44.

24 Notice, 90 FR at 19021.

25 CFTC Letter No. 19-17, Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants (July 10, 2019).

26 15 U.S.C. 78s(b)(2)(C).

thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."[27]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[28] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[29] Moreover, "unquestioning reliance" on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[30]

After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to LCH SA. More specifically, for the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(A) of the Act,[31] and Rules 17ad-22(e)(1),[32] 17ad-26(a)(8)(i),[33] and Rule 1004.[34]

A. Consistency with Section 17A(b)(3)(A) of the Act

Section 17A(b)(3)(A)[35] of the Act requires, among other things, that LCH SA have the capacity to be able to safeguard securities and funds in its custody or control or for which it is responsible. Based on a review of the Proposed Rule Change, and for the reasons discussed below, the Proposed Rule Change is consistent with 17A(b)(3)(A).

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27 Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

28 *Id.*

29 *Id.*

30 *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017).

31 15 U.S.C. 78q-1(b)(3)(A).

32 17 CFR 240.17ad-22(e)(1).

33 17 CFR 240.17ad-26(a)(8)(i).

34 17 CFR 242.1004.

35 15 U.S.C. 78q-1(b)(3)(A).

As discussed above, LCH SA is proposing to require its Clearing Members to participate in testing of its BCDR and RWD plans. Specifically, new proposed article 2.2.8.1(i) would allow LCH SA to require its Clearing Members to assist in certain testing of these plans, in the manner and frequency specified by LCH SA. Regular testing of these plans will help LCH SA identify and resolve any potential issues with the plans and help ensure that LCH SA and its Clearing Members know how to execute the plans if ever required to do so. Thus, regular testing of these plans will help ensure that the plans work and function as intended.

A recovery, wind-down, or business disruption could lead to the failure of LCH SA's business operations, which could, in turn, inhibit the safeguarding of securities and funds that LCH SA controls. Because the plans would facilitate the continuity and orderly functioning of LCH SA's CDS Clearing Service in the case of a recovery, wind-down, or business disruption, the plans should help ensure that LCH SA can continue to safeguard securities and funds in those situations. Likewise, requiring Clearing Members to participate in functional and performance testing of recovery and wind down plans also would help in safeguarding Clearing Member securities and funds. For these reasons, the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(A) of the Act.[36]

B. Consistency with Rule 17ad-22(e)(1)

Rule 17ad-22(e)(1) requires that covered clearing agencies[37] establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[38]

The change in treatment for margin across multiple accounts was instituted in response to the CFTC's adoption of Rule 1.44, the "Margin Adequacy and Treatment of Separate

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36 15 U.S.C. 78q-1(b)(3)(A).

37 LCH SA is a covered clearing agency because it is a registered clearing agency that provides the services of a central counterparty. *See* 17 CFR 240.17ad-22(a).

38 17 CFR 240.17ad-22(e)(1).

Accounts."[39] As a covered clearing agency regulated by the Commission, LCH is bound by Commission rules, specifically Rule 17ad-22(e)(1), to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[40] Consequently, LCH must establish, implement, maintain and enforce written policies and procedures to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions, and this applies to changes in margin treatment as contemplated by CEA Rule 1.44.[41]

Accordingly, LCH has provided the legal basis of its new rule on margin treatment across accounts belonging to the same Clearing Members, namely compliance with a newly adopted CFTC rule, and has thereby provided the legal basis for the rule, which is consistent with Commission Rule 17ad-22(e)(1).[42]

C. Consistency with Rule 17ad-26(a)(8)(i)

Rule 17ad-26(a)(8)(i) requires that a covered clearing agency's plans for recovery and wind-down referenced in Rule 17ad-22(e)(3)(ii)[43] must "include procedures for testing the covered clearing agency's ability to implement the recovery and orderly wind-down plans at least every 12 months, including by requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing of its plans."[44]

By mandating that LCH SA's Clearing Members participate in testing of its RWD plans, in the manner and frequency specified by LCH SA, new Article 2.2.8.1 is consistent with

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39 17 CFR 1.44.

40 17 CFR 17ad-22(e)(1).

41 17 CFR 17ad-22(e)(1).

42 17 CFR 17ad-22(e)(1). To be clear, the Commission is not opining on the requirements of Rule 1.44 or concluding that the proposed change in treatment for margin across multiple accounts is consistent with Rule 1.44, only that LCH SA has identified the legal basis for the proposed change (*i.e.*, Rule 1.44), and therefore the proposed rule change is consistent with Rule 17ad-22(e)(1).

43 17 CFR 240.17ad-22(e)(3)(ii).

44 17 CFR 240.17ad-26(a)(8)(i).

Rule17ad-26(a)(8)(i).[45]

D. Consistency with Rule 1004

Rule 1004 requires that an SCI entity,[46] with respect to its business continuity and disaster recovery plans,[47] among other things, "[d]esignate members or participants . . . and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months."[48]

New Article 2.2.8.1 provides that each Clearing Member must participate in the testing in the manner and frequency specified by LCH SA. LCH SA is therefore able to mandate testing not less than once every 12 months. By mandating that LCH SA's Clearing Members participate in testing of its BCDR plans, in the manner and frequency specified by LCH SA, new Article 2.2.8.1 is consistent with Rule 1004.[49]

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45 *Id.*

46 LCH SA, as a registered cleaing agency, is a SCI entity. *See* 17 CFR 242.1000.

47 SCI Rule 1001 requires LCH SA to establish, maintain, and enforce certain written policies and procedures including, among other things, business continuity and disaster recovery plans. *See* 17 CFR 242.1001.

48 17 CFR 242.1004.

49 17 CFR 242.1004.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[50] and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,[51] that the Proposed Rule Change (SR-LCH SA-2025-005) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Sherry R. Haywood,

Assistant Secretary.

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50 In approving the Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

51 15 U.S.C. 78s(b)(2).

52 17 CFR 200.30-3(a)(12).