

arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2021-008 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICEEU-2021-008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2021-008 and should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-91676; File No. SR-LCH SA-2021-001]**

### **Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the Clearing of Single-Name Credit Default Swaps by U.S. Customers**

April 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on April 13, 2021, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by LCH SA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

(a) Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), is proposing to amend its (i) CDS Clearing Rule Book (the "Rule Book"), (ii) CDS Clearing Supplement (the "Clearing Supplement"), (iii) some of its CDS Clearing Procedures (the "Procedures"), and (iv) FCM Clearing Regulations ("Clearing Regulations"), to allow LCH SA to offer clearing services in respect of single-name credit default swaps ("CDS") that are "security-based swaps" ("SBS") ("Single-Name CDS") to be submitted by Clearing Members on behalf of their U.S. Clients for clearing by LCH SA.<sup>3</sup> LCH SA is also proposing to revise a number of its rules to make additional amendments and conforming and clarifying amendments for consistency purposes. The text of the

<sup>15</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.

<sup>3</sup> Capitalized terms used but not defined herein shall have the meaning specified in the Rule Book, the Clearing Supplement, the Procedures and the Clearing Regulations, as applicable.

proposed rule change has been annexed as Exhibit 5. The launch of clearing Single-Name CDS for U.S. Clients will be contingent upon LCH SA's receipt of all necessary regulatory approvals, including the approval by the Commission of the proposed rule change described herein.

(b) Not applicable.

(c) Not applicable.

#### **II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, LCH SA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

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

###### (a) Purpose

The purpose of the proposed rule change is to revise LCH SA's rules and procedures to (1) allow LCH SA to extend its clearing services in respect of Single-Name CDS for U.S. Clients of Clearing Members and (2) make additional amendments and conforming and clarifying amendments for consistency purposes.

###### (1) Amendments To Permit LCH SA To Offer Clearing Services in Relation to the Clearing of Single-Name CDS for U.S. Clients

Under the derivatives regulatory regime established by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the SEC was given regulatory authority over derivatives that qualify as "security-based swaps" and the US Commodity Futures Trading Commission ("CFTC") was given regulatory authority over derivatives that qualify as "swaps." As a result of this division of regulatory responsibility, certain index CDS that are not based on a narrow-based security index constitute "swaps" subject to the regulations of the CFTC. On the other hand, Single-Name CDS constitute "security-based swaps" subject to the regulations of the SEC. Currently, U.S. Clients are permitted to clear index CDS that qualify as "swaps" at LCH SA but not Single-Name CDS.

A Single-Name CDS is a contract based on the credit risk of a single issuer (a "Reference Entity") in which the

buyer of protection transfers the credit risk of the Reference Entity to the seller of protection without transferring the underlying obligation of the Reference Entity. The key terms of a Single-Name CDS include, among other things, (1) the identity of the Reference Entity, (2) the agreed upon notional amount, (3) the maturity date, (4) required payments by the protection buyer, (5) "credit events" that result in an obligation from the protection seller to the protection buyer, and (6) settlement terms. Upon the launch of clearing of Single-Name CDS for U.S. Clients, LCH SA will provide central counterparty services for such Single-Name CDS that are accepted for clearing.

The proposed changes described below would allow U.S. Clients to clear Single-Name CDS at LCH SA.

#### i. Rule Book

##### a. Changes to Defined Terms

The Rule Book would be amended to add several new defined terms in order to accommodate the extension of LCH SA's CDS Clearing Services in respect of Single-Name CDS submitted to LCH SA for clearing on behalf of U.S. Clients. Specifically, LCH SA proposes to add a definition for "BD" as a legal entity that is a "broker" or "dealer" as defined in Section 3(a)(4) or 3(a)(5) of the Securities Exchange Act of 1934 (the "Exchange Act"), respectively, and is registered in such capacity with the SEC and a member in good standing of FINRA (a defined term of "FINRA" would be added to the Rule Book and defined as the Financial Industry Regulatory Authority, Inc., or any successor thereto). The term "FCM Clearing Member" would in turn be retitled as "FCM/BD Clearing Member" and would be defined as any FCM, BD, or legal entity that is both an FCM and BD that has been admitted as a clearing member. "FCM Client" would likewise be retitled as "FCM/BD Client" and would mean any Client that is (i) a Cleared Swaps Customer of an FCM/BD Clearing Member to which the FCM/BD Clearing Member provides CDS Client Clearing Services with respect to positions in FCM/BD Cleared Transactions that are "Cleared Swaps," or (ii) an SBS Customer of an FCM/BD Clearing Member to which the FCM/BD Clearing Member provides CDS Client Clearing Services with respect to positions in FCM/BD Cleared Transactions that are SBS. A defined term "SBS Customer" would be added to the Rule Book and would be defined as "security-based swap customer" (as

defined in Exchange Act Rule 15c3-3)<sup>4</sup> of an FCM/BD Clearing Member to which the FCM/BD Clearing Member provides CDS Client Clearing Services with respect to positions in FCM/BD Cleared Transactions that are SBS in one or more accounts described in the FCM/BD SBS Client Account Structure.

A new defined term "Cleared Swap" would be added in the Rule Book, in order to differentiate between "swaps" and "SBS" and the different account structures for each (as further described below), to mean an "FCM/BD Cleared Transaction" (i) constituting a "Cleared Swap" as defined in CFTC Regulation 22.1<sup>5</sup> or (ii) constituting an SBS that is held in the FCM/BD Swaps Client Account Structure.<sup>6</sup> A "Cleared Swaps Customer," in turn, would be 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 as defined in Section 1a(18) of the U.S. Commodity Exchange Act, other than subparagraph (C) thereof, or as may be further defined by CFTC Regulations, and (ii) a person that would be a "Cleared Swaps Customer," as defined in CFTC Regulation 22.1, of an FCM/BD Clearing Member 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" in CFTC Regulation 22.1.<sup>7</sup> "Cleared Swaps Customer Collateral" would be defined as "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.<sup>8</sup>

The defined terms in the Rule Book which relate to the account structure in which collateral for Cleared Swaps and SBS would be held would be revised to accommodate three account structures: (1) A separate account structure for

Cleared Swaps, (2) a separate account structure for SBS, and (3) an account structure in which an FCM/BD Clearing Member that is both an FCM and a BD may elect to clear and hold margin for FCM/BD Cleared Transactions that are SBS for FCM/BD Clients on a commingled basis with Cleared Swaps in accordance with the Portfolio Margining Order. Each account structure is described in further detail below and the defined terms (and the changes to existing defined terms) with respect to those account structures would include:

- "FCM/BD Client Account Structure" would mean the accounts comprising the FCM/BD Swaps Client Account Structure and the FCM/BD SBS Client Account Structure set out in the Rule Book and registered in the CDS Clearing System in the name of an FCM/BD Clearing Member.

- "FCM/BD Swaps Client Account Structure" would mean the accounts comprising the FCM/BD Swaps Client Account Structure and registered in the CDS Clearing System in the name of an FCM/BD Clearing Member.

- "FCM/BD SBS Client Account Structure" would mean the accounts comprising the FCM/BD SBS Client Account Structure and registered in the CDS Clearing System in the name of an FCM/BD Clearing Member.

- "FCM/BD Client Collateral Account" would mean an FCM/BD Swaps Client Collateral Account and/or an FCM/BD SBS Client Collateral Account.

- "FCM/BD Swaps Client Collateral Account" would mean an account opened in the books of LCH SA to record the Collateral held by LCH SA for the benefit of an FCM/BD Clearing Member's FCM/BD Clients with respect to Cleared Swaps, the aggregate value of such Collateral being divided among, and recorded in: (i) The FCM/BD Swaps Client Financial Account; (ii) the FCM/BD Swaps Buffer Financial Account; and (iii) the FCM/BD Swaps Unallocated Client Collateral Financial Account.

- "FCM/BD SBS Client Collateral Account" would mean an account opened in the books of LCH SA to record the Collateral held by LCH SA for the benefit of an FCM/BD Clearing Member's SBS Customers with respect to FCM/BD Cleared Transactions that are SBS (excluding any SBS transactions held in the FCM/BD Swaps Client Account Structure as Cleared Swaps), the aggregate value of such Collateral being divided among, and recorded in: (i) The FCM/BD SBS Client Financial Accounts; (ii) the FCM/BD SBS Buffer Financial Account; and (iii) the FCM/

<sup>4</sup> 17 CFR 240.15c3-3.

<sup>5</sup> 17 CFR 22.1.

<sup>6</sup> SBS held in the FCM/BD Swaps Client Account structure would include SBS eligible for portfolio margining as contemplated in the Commission's Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in connection with Portfolio Margining of Swaps and Security-Based Swaps. 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. 14, 2012), 77 FR 75211 (Dec. 19, 2012) (the "Portfolio Margining Order").

<sup>7</sup> 17 CFR 22.1.

<sup>8</sup> 17 CFR 22.1.

BD SBS Client Excess Collateral Financial Account.

- “FCM/BD Client Financial Account” would mean an FCM/BD Swaps Client Financial Account or an FCM/BD SBS Client Financial Account.

- “FCM/BD Swaps Client Financial Account” would mean a segregated account opened in the books of LCH SA for each Cleared Swaps Customer of an FCM/BD Clearing Member with a view to record the Legally Segregated Value related to Cleared Swaps of such Cleared Swaps Customer as determined by LCH SA in accordance with the CDS Clearing Rules.

- “FCM/BD SBS Client Financial Account” would mean a segregated account opened in the books of LCH SA for an SBS Customer of an FCM/BD Clearing Member with a view to record the Legally Segregated Value related to SBS (excluding SBS that are held in the FCM/BD Swaps Client Account Structure as Cleared Swaps) of such FCM/BD Clearing Member’s SBS Customer as determined by LCH SA in accordance with the CDS Clearing Rules.

- “FCM/BD Client Margin Account” would mean an FCM/BD Swaps Client Margin Account or an FCM/BD SBS Client Margin Account.

- “FCM/BD Swaps Client Margin Account” would mean an account opened by LCH SA in the name of an FCM/BD Clearing Member for the benefit of each Cleared Swaps Customer of such FCM/BD Clearing Member in the CDS Clearing System for risk management purposes, in which the FCM/BD Cleared Transactions of such Client that are Cleared Swaps are netted and corresponding Open Positions are registered, and each FCM/BD Client related Cleared Swaps positions corresponding to Eligible Intraday Transactions and Irrevocable Backloading STM Transactions pre-registered in the Account Structure of such FCM/BD Clearing Member (if so applicable) are recorded, in order to calculate the FCM/BD Client Margin Requirement and Client NPV Payment Requirement of such FCM/BD Clearing Member in respect of such FCM/BD Client.

- “FCM/BD SBS Client Margin Account” would mean an account opened by LCH SA in the name of an FCM/BD Clearing Member for the benefit of each SBS Customer of such FCM/BD Clearing Member in the CDS Clearing System for risk management purposes, in which the SBS of the SBS Customers (excluding SBS that are held in the FCM/BD Swaps Client Account Structure as Cleared Swaps) are netted and corresponding Open Positions are

registered, and each FCM/BD Client related SBS positions (excluding SBS transactions that are held in the FCM/BD Swaps Client Account Structure as Cleared Swaps) corresponding to Eligible Intraday Transactions and Irrevocable Backloading STM Transactions pre-registered in the Account Structure of such FCM/BD Clearing Member (if so applicable) are recorded, in order to calculate the FCM/BD Client Margin Requirement and Client NPV Payment Requirement of such FCM/BD Clearing Member in respect of such SBS Customer.

- “FCM/BD Client Trade Account” would mean an FCM/BD Swaps Client Trade Account or an FCM/BD SBS Client Trade Account.

- “FCM/BD Swaps Client Trade Account” would mean an account opened by LCH SA in the name of an FCM/BD Clearing Member for the benefit of a Customer of such FCM/BD Clearing Member in order to register all Cleared Swaps (including any SBS that are held in the FCM/BD Swaps Client Account Structure as Cleared Swaps) in relation to such FCM/BD Client.

- “FCM/BD SBS Client Trade Account” would mean an account opened by LCH SA in the name of an FCM/BD Clearing Member for the benefit of an SBS Customer of such FCM/BD Clearing Member in order to register all SBS cleared by such FCM/BD Clearing Member (excluding SBS that are held in the FCM/BD Swaps Client Account Structure as Cleared Swaps) in relation to such SBS Customer.

- “FCM/BD Buffer Financial Account” would mean an FCM/BD Swaps Buffer Financial Account or an FCM/BD SBS Buffer Financial Account.

- “FCM/BD Swaps Buffer Financial Account” would mean a segregated account opened in the books of LCH SA to record the value of an FCM/BD Clearing Member’s FCM/BD Client Collateral Buffer with respect to Cleared Swaps.

- “FCM/BD SBS Buffer Financial Account” would mean a segregated account opened in the books of LCH SA to record the value of an FCM/BD Clearing Member’s FCM/BD SBS Client Collateral Buffer.

- “FCM/BD Client Collateral Buffer” would mean FCM/BD Swaps Client Collateral Buffer or FCM/BD SBS Client Collateral Buffer.

- “FCM/BD Swaps Client Collateral Buffer” would 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 Financial 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 comprising one or more Client Trade Leg(s).

- “FCM/BD SBS Client Collateral Buffer” would 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 SBS Buffer Financial Account which may be used by LCH SA to meet obligations in respect of the FCM/BD Cleared Transactions of SBS Customers, including for the purpose of satisfying the Notional and Collateral Checks performed by LCH SA in respect of Eligible Intraday Transactions comprising one or more Client Trade Leg(s).

- “FCM/BD Available Client Collateral Buffer” would mean the FCM/BD Swaps Available Client Collateral Buffer or the FCM/BD SBS Available Client Collateral Buffer.

- “FCM/BD Swaps Available Client Collateral Buffer” would mean the portion of the FCM/BD Swaps Client Collateral Buffer which, at the relevant time, is not allocated to any FCM/BD Swaps Client Margin Account and is available to be used to enable the novation of Client Trade Legs.

- “FCM/BD SBS Available Client Collateral Buffer” would mean the portion of the FCM/BD SBS Client Collateral Buffer which, at the relevant time, is not allocated to any FCM/BD SBS Client Margin Account and is available to be used to enable the novation of Client Trade Legs.

- “FCM/BD Swaps Client Excess Collateral” would mean the amount of any FCM/BD Excess Collateral attributable to an FCM/BD Swaps Client Margin Account and held on an intraday basis prior to the next Morning Call before it is transferred to the related FCM/BD Clearing Member’s FCM/BD Swaps Unallocated Client Collateral Financial Account.

- “FCM/BD SBS Client Excess Collateral” would mean the FCM/BD Client Excess Collateral as set out in the proposed new Article 6.2.5.2(ii) of the Rule Book.

- “FCM/BD SBS Client Excess Collateral Financial Account” would mean a segregated account opened in the books of LCH SA to record the value of FCM/BD SBS Client Excess Collateral as determined by LCH SA.

- “FCM/BD Swaps Unallocated Client Collateral Financial Account” would mean a segregated account opened in the books of LCH SA to record the value of FCM/BD Swaps Unallocated Client Excess Collateral as determined by LCH SA.

- “FCM/BD Swaps Unallocated Client Excess Collateral” would mean the FCM/BD Client Excess Collateral as set out in the proposed amended Section 6.2.5 of the Rule Book.

Changes to the Rule Book would also be made in certain jurisdictional definitions to reflect that SBS would be available for Clearing to U.S. Clients. Specifically, “Non-U.S. CCM” would be defined, when used in the context of an Original Transaction, as a CCM that has its residence in, is organized under the laws of, or has its principal place of business located in, a jurisdiction other than the United States, its territories or possessions and is not a registered BD or FCM. A “Non-U.S. CCM Client” would be defined as a CCM Client that is not a U.S. CCM Client. A “U.S. CCM Client” would be defined as a Client of an FCM or a BD or any Client that has its residence in, is organized under the laws of, or has its principal place of business located in the United States, its territories or possessions.

The following defined terms in Chapter 1, Section 1.1.1 would also include conforming changes to accommodate the clearing of Single-Name CDS for U.S. Clients: “Account Structure,” “Affiliate,” “Allocated Client Collateral Buffer,” “Available Client Collateral Buffer,” “Backup Clearing Member,” “Carrying Clearing Member,” “CCM,” “CDS Clearing Rules,” “CDS Clearing Service,” “Cleared Transaction,” “Client,” “Client Account Structure,” “Client Assets,” “Client Collateral Account,” “Client Collateral Buffer,” “Client Collateral Buffer Shortfall,” “Client Collateral Buffer Threshold,” “Client Excess Collateral,” “Client Margin Account,” “Client Margin Requirement,” “Client Margin Shortfall,” “Client Termination Amount,” “Client Trade Account,” “Excess Collateral,” “Excess Collateral Threshold,” “FCM Allocated Client Collateral Buffer,” “FCM CDS Clearing Regulations,” “FCM Cleared Transaction,” “FCM Client Collateral Buffer Shortfall,” “FCM Client Collateral Buffer Threshold,” “FCM Client Excess Collateral,” “FCM Client Margin Requirement,” “FCM Client Margin Shortfall,” “FCM Client Termination Amount,” “FCM Excess Collateral,” “FCM House Cleared Transaction,” “FCM House Collateral Account,” “FCM House Excess Collateral,” “FCM House Excess

Collateral Shortfall,” “FCM House Excess Collateral Threshold,” “FCM House Margin Account,” “FCM House Margin Requirement,” “FCM House Margin Shortfall,” “FCM Margin Balance,” “FCM Required Collateral Amount,” “General Member,” “House Collateral Account,” “House Excess Collateral,” “House Excess Collateral Shortfall,” “House Excess Collateral Threshold,” “House Margin Account,” “House Margin Requirement,” “House Margin Shortfall,” “Legally Segregated Value,” “Margin Account,” “Margin Balance,” “Notional and Collateral Check,” “Porting FCM Cleared Transaction,” “Receiving Clearing Member,” “Required Collateral Amount,” and “Select Member.”

In addition to the foregoing changes, various other conforming and clarifying changes would be made throughout Title I (General Provisions & Legal Framework) to incorporate terms to accommodate Single-Name CDS cleared for FCM/BD Clients. Those conforming and clarifying changes are set forth in Articles 1.2.10.3(xix) and (xxi), 1.2.10.4(vii), (x) and (xi), 1.2.14.4, 1.2.14.5(iv), 1.3.1.3(vi), 1.3.1.4, 1.3.1.6 (ii)—(iv), 1.3.1.9, and 1.3.1.10.

#### b. Membership and Clearing Operations

Article 2.1.1.2 of the Rule Book would be revised to provide that, without prejudice to the membership requirements set out in the CDS Clearing Rules and applicable law, both FCMs and BDs are eligible to become FCM/BD Clearing Members.

Additional conforming and clarifying changes would be made throughout Title II (Legal Obligations) to include terms for Single-Name CDS and certain other clarifying changes, including in Article 2.2.0.3, 2.2.1.1 (iv), (xxi), (xxiv), and (xxv), 2.2.1.2, 2.2.2.1, 2.2.3.1, 2.3.4.2, 2.4.2.11, and 3.1.10.9.

#### c. Risk Management

The procedures with respect to the return of collateral are set forth in Article 4.2.2.5 of the Rule Book and would be revised, in the case of an FCM/BD Clearing Member, so that if 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 the value of the Collateral attributed to the FCM/BD Buffer Financial Account exceeds the FCM/BD Client Collateral Buffer Threshold, then the amount of the excess: (1) If related to Cleared Swaps, will be reclassified as FCM/BD Swaps Unallocated Client Excess Collateral; and (2) if related to SBS (excluding SBS that are held in the FCM/BD Swaps Client Account

Structure as Cleared Swaps (as described below)), will be reclassified as FCM/BD SBS Client Excess Collateral, and thereafter may be returned to the FCM/BD Clearing Member.

Other conforming changes in Title IV (Risk Management) of the Rule Book are set forth in Article 4.2.2.1, 4.2.2.4, 4.2.2.6, 4.2.3.1, 4.2.6.3, 4.2.6.4, 4.2.6.6, 4.3.1.3, 4.3.2.3(i), (x), (xv) and (xix), 4.3.2.4, 4.3.2.7, 4.3.3.1(i), 4.3.3.2, and 4.3.3.4.

#### d. CDS Client Clearing Services Provided by a CCM

Article 5.1.1.2, which relates to the provision of CDS Client Clearing Services and sets limitations on the scope of services that may be provided by a Clearing Member that is a CCM, previously provided, in clause (v), that a Non-U.S. CCM shall not provide CDS Client Clearing Services to any U.S. CCM Client with respect to an Original Transaction that is SBS and that a U.S. CCM shall not provide any CDS Client Clearing Services to any U.S. CCM Client with respect to an Original Transaction that is SBS. Clause (v) of Article 5.1.1.2 would be deleted in its entirety. Separately, clause (vi) would be re-numbered as clause (v) and would provide that a CCM shall not provide CDS Client Clearing Services to any U.S. CCM Client with respect to an Original Transaction (which would include any SBS) unless such CCM is an FCM and/or BD.

#### e. CDS Client Clearing Services Provided by an FCM/BD Clearing Member

Article 6.1.1.2(vi) previously provided that an FCM shall not provide CDS Client Clearing Services to any FCM Client with respect to SBS; it would be revised to delete that restriction.

Article 6.2.1.1 sets forth the required account structure for FCM/BD Clearing Members. Article 6.2.1.1(i) would set forth the required account structure for an FCM (which may also be a BD) with respect to any Cleared Swaps, which would entail:

- An FCM/BD Swaps Client Trade Account for each Cleared Swaps Customer.
- An FCM/BD Swaps Client Margin Account for each Cleared Swaps Customer.
- An FCM/BD Swaps Client Financial Account for each Cleared Swaps Customer.
- An FCM/BD Swaps Unallocated Client Collateral Financial Account.
- An FCM/BD Swaps Buffer Financial Account.
- An FCM/BD Swaps Client Collateral Account.

For an FCM/BD Clearing Member that is a BD (which may also be an FCM), with respect to SBS (excluding SBS that are permitted to be held in an account with Cleared Swaps), Article 6.2.1.1(ii) would require the following account structure:

- An FCM/BD SBS Client Trade Account for each SBS Customer.<sup>9</sup>
- An FCM/BD SBS Client Margin Account for each SBS Customer.<sup>10</sup>
- An FCM/BD SBS Client Financial Account for each SBS Customer.<sup>11</sup>
- An FCM/BD SBS Client Excess Collateral Financial Account.<sup>12</sup>
- An FCM/BD SBS Buffer Financial Account.<sup>13</sup>
- An FCM/BD SBS Client Collateral Account.<sup>14</sup>

<sup>9</sup> Article 6.2.2.1, which relates to the establishments of trade accounts, would be revised to provide for the establishment of FCM/BD SBS Client Trade Accounts for SBS Customers.

<sup>10</sup> Article 6.2.3.1, which relates to the establishment of client margin accounts, would be revised to provide for the establishment of FCM/BD SBS Client Margin Accounts for SBS Customers. Article 6.2.3.2 would be revised to provide that FCM/BD Cleared Transactions (i) registered in an FCM/BD Swaps Client Trade Account for a Cleared Swaps Customer will be allocated to the corresponding FCM/BD Cleared Swaps Client Margin Account and (ii) registered in an FCM/BD SBS Client Trade Account for an SBS Customer will be allocated to the corresponding FCM/BD SBS Client Margin Account, for the purpose of the determination of the Open Positions and NPV Payment Requirements attributable to such FCM/BD Client.

<sup>11</sup> Article 6.2.4.1, which relates to the establishment of Client Financial Accounts, would be revised to include a new clause (ii) (a) setting forth the establishment of an FCM/BD SBS Client Financial Account for each SBS Customer, in which LCH SA will record the value of Collateral provided by the FCM/BD Clearing Member in respect of such SBS Customer's Open Positions in SBS.

<sup>12</sup> Article 6.2.4.1(ii)(c) would be added to provide that LCH SA shall open an FCM/BD SBS Client Excess Collateral Financial Account, in which LCH SA will record the value of FCM/BD SBS Client Excess Collateral. Article 6.2.5.2 (ii) would provide that an FCM/BD Clearing Member is not permitted to maintain any FCM/BD Client Excess Collateral on a day-to-day basis with respect to SBS, but may hold FCM/BD Client Excess Collateral on an intraday basis and that LCH SA shall transfer the value of any FCM/BD Client Excess Collateral that is reflected in any FCM/BD SBS Client Financial Account of the FCM/BD Clearing Member prior to the Morning Call to the FCM/BD Clearing Member's FCM/BD SBS Client Excess Collateral Financial Account. In addition, Article 6.2.5.2(iv) would provide that LCH SA shall hold FCM/BD SBS Client Excess Collateral in the FCM/BD SBS Client Excess Collateral Financial Account for the benefit of FCM/BD Clearing Member's FCM/BD Clients that are SBS customers as a class in accordance with SEC regulations and Applicable Law and that upon the request of an FCM/BD Clearing Member, LCH SA will return FCM/BD SBS Client Excess Collateral to such FCM/BD Clearing Member.

<sup>13</sup> Article 6.2.4.1(ii)(b) would be added to provide that LCH SA shall open an FCM/BD SBS Buffer Financial Account, in which LCH SA will record the value of Collateral provided as FCM/BD SBS Client Collateral Buffer.

<sup>14</sup> Article 6.2.4.1(ii)(d) would be added to provide that LCH SA shall open an FCM/BD SBS Client

A new Article 6.2.1.1(iii) would also be added to provide that an FCM/BD Clearing Member that is both an FCM and a BD may elect to clear and hold margin for 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 participating in the portfolio margining shall be an eligible contract participant as defined in Section 1a(18) of the Commodity Exchange Act. Upon such election, FCM/BD Cleared Transactions that are SBS will be included as "Cleared Swaps" and maintained in the FCM/BD Swaps Client Account Structure.

Articles 6.1.1.1, 6.1.1.2, 6.1.1.3, 6.1.1.4, 6.1.1.5, 6.2.1.2, 6.2.1.3, 6.2.1.4, 6.2.2.1, 6.2.2.2, 6.2.3.1, 6.2.3.2, 6.2.3.3, 6.2.4.1, 6.2.4.2, 6.2.4.3, 6.2.4.4, 6.2.5.1, 6.2.5.2, 6.2.6.1, 6.2.6.2, 6.3.1.1, 6.3.2.1, 6.3.3.1, 6.3.4.1, 6.3.4.2, 6.3.5.1, 6.3.5.2, 6.4.1.1, and 6.4.1.3 would also include certain conforming and clarifying changes.

#### f. Default Management

Appendix I of the Rule Book (CDS Default Management Process), Clause 1.1 which provides for the definition of "Transaction Categories" would be amended to provide that different categories of Cleared Transactions will include "Single Name Cleared Transactions" for consistency purposes. Clause 3.3 of Appendix I would also be amended to provide that the CDS Default Management Process shall be carried out in a manner consistent with the requirements of the SIPC (which is the Securities Investor Protection Corporation or any successor thereto in accordance with the proposed definition of new defined term of "SIPC" in Section 1.1.1 of the Rule Book), Exchange Act and SEC Regulations. Clause 5.4 of Appendix I, which relates to the Competitive Bidding Process, would be revised to provide in Clause 5.4.1, that a Non-Defaulting Clearing Member that is a BD but not an FCM is not required to participate in Competitive Bidding for an Auction Package containing any Cleared Swaps and that a Non-Defaulting Clearing Member that is an FCM but not a BD is not required to participate in Competitive Bidding for an Auction Package containing any SBS.

Collateral Account in which LCH SA will record the Collateral held by LCH SA recorded in the foregoing accounts.

Other conforming changes in Appendix I are set forth in Clauses 3.3, 4.2.1, 4.2.2, 4.2.3, 4.2.5, 4.2.8, 4.3.1, 4.4.3, 4.5.2, 8.1.4, 8.5, 8.7 and 8.9.

#### ii. Clearing Supplement

Various clarifying and conforming changes would be made to the Clearing Supplement to account for the clearing of SBS for FCM/BD Clients. Specifically, certain references to "FCM" therein would be replaced with "FCM/BD." Those changes are set forth in Sections 1.7 and 9.2(c) of Parts A and B of the Clearing Supplement and in Sections 1.7 and 6.10(b) and (d) of Part C of the Clearing Supplement.

#### iii. Procedures

Section 2 of the Procedures (Margin, NPV Payment and Price Alignment) would include conforming changes in Sections 2.2, 2.3, 2.5, and 2.16.

Section 3 of the Procedures (Collateral, Variation Margin and Cash Payment) would be amended, in Section 3.3(b), which relates to the Collateral Account structure, to add a reference to the FCM/BD SBS Client Collateral Account to record the collateral held by LCH SA for the benefit of an FCM/BD Clearing Member's SBS Customers with respect to SBS (excluding SBS that are held in an account in the FCM/BD Swaps Client Account Structure), the aggregate value of such Collateral being divided amongst, and recorded in: the FCM/BD SBS Client Financial Account; the FCM/BD SBS Buffer Financial Account; and the FCM/BD SBS Client Excess Collateral Financial Account.

Section 3.7(a) would be amended to provide that with respect to the Clients of a Clearing Member, LCH SA will perform Collateral Calls, in respect of SBS, with a "TARGET2 Account" used to make Collateral Calls in relation to the Client Margin Requirements with respect to SBS (excluding SBS held in the FCM/BD Swaps Client Account Structure) and FCM/BD Client Collateral Buffer Threshold of each FCM/BD Clearing Member, which for the avoidance of doubt would form part of the LCH SBS Client Segregated Depository Account. Section 3.7(b) would also be amended to provide that an FCM/BD Clearing Member must hold three "TARGET2 Accounts," for purposes of Collateral Calls in respect of (i) its FCM/BD House Margin Requirement and FCM/BD House Excess Collateral Threshold, (ii) its Client Margin Requirement(s) with respect to Cleared Swaps and FCM/BD Client Collateral Buffer Threshold and (iii) its Client Margin Requirement(s) with respect to SBS (excluding SBS that are held in the FCM/BD Swaps Client

Account Structure) and FCM/BD Client Collateral Buffer Threshold. Section 3.7(g) would be amended to provide that, in respect of an FCM/BD SBS Client Excess Collateral Financial Account, the FCM/BD Clearing Member may request LCH SA to return some or all FCM/BD SBS Client Excess Collateral in the form of Euro denominated Cash Collateral provided that the requested amount does not exceed the FCM/BD SBS Client Excess Collateral recorded in its FCM/BD SBS Client Collateral Account.

Section 3.8(a)–(b) of the Procedures would be amended to provide that with respect to Clients of a Clearing Member, LCH SA would open (i) a multi-currency account used to credit non-Euro, non-USD Cash Collateral which is transferred by an FCM/BD Clearing Member to be recorded in its FCM/BD SBS Client Collateral Account, which would form part of the LCH SBS Client Segregated Depository Account for purposes of the FCM/BD CDS Clearing Regulations and (ii) an account used to credit USD Cash Collateral which is transferred by FCM/BD Clearing Members to be recorded in their FCM/BD SBS Client Collateral Account, which would also form part of the LCH SBS Client Segregated Depository Account for purposes of the FCM/BD CDS Clearing Regulations. With respect to excess collateral, Section 3.8(h) and (i), which relate to the return of collateral would be amended to provide for the return of excess collateral in respect of SBS. Section 3.18(c) would be amended to provide that LCH SA will open a cash account used to debit or credit USD to satisfy Cash Payments and/or Variation Margin Collateral Transfer obligations in USD with respect to all relevant Client Cleared Transactions of each FCM/BD Clearing Member that are SBS (excluding SBS that are held in the FCM/BD Swaps Client Account Structure). Other conforming changes in Section 3 of the Procedures are included in the recital and Sections 3.2, 3.3, 3.4, 3.7(a), (d), (f) and (g), 3.8(a), (b), (c), (f), (g), (h) and (i), 3.9(d) and (e), 3.10(b), 3.14, 3.17 and 3.18.

Section 4 of the Procedures (Eligibility Requirements) would be amended to delete the provision in Section 4.1 which previously provided that (i) in respect of an FCM Client, a U.S. CCM Client of a Non-U.S. CCM or a CCM Client of a U.S. CCM, the Original Transaction may not be a Single Name CDS or any other SBS identified as such in a Clearing Notice; and (ii) in respect of a Non-U.S. CCM Client, the Original Transaction may not be a Single Name CDS or any other SBS

identified as such in a Clearing Notice unless such transaction is cleared through a Non-U.S. CCM.

Section 5 of the Procedures (CDS Clearing Operations) would be revised to include conforming changes in Sections 5.6 and 5.11.

#### iv. Clearing Regulations

The Clearing Regulations, currently titled as “FCM CDS Clearing Regulations,” would be retitled as the “FCM/BD CDS Clearing Regulations.”

Various defined terms in the Clearing Regulations would be updated to accommodate the extension of LCH SA’s clearing services in respect of Single-Name CDS to U.S. Clients. The defined term “FCM Cleared Swaps Client Segregated Depository Account” would be retitled as the “FCM/BD Cleared Swaps Client Segregated Depository Account” and references in that definition to “FCM Clients” would be replaced with “Cleared Swap Customers.” Similarly, the references in the defined term “LCH Cleared Swaps Client Segregated Depository Account” to “FCM Clients” would be replaced with “Cleared Swaps Customers” and references to “Cleared Transactions” therein would refer to Cleared Transactions that are “Cleared Swaps.” A new defined term “LCH SBS Client Segregated Depository Account” would be added and would mean an omnibus account maintained by an FCM/BD Clearing Member for its SBS Customers with a Bank, which is segregated in accordance with the Exchange Act and SEC Regulations and contains collateral deposited by such SBS Customers in connection with FCM/BD Cleared Transactions that are SBS cleared for such SBS Customers by such FCM/BD Clearing Member, excluding any SBS held in the FCM/BD Swaps Client Account Structure that are permitted to be held in an account with Cleared Swaps as defined in CFTC Regulation 22.1 under Applicable Law. A new defined term for “Bank” would also be added, to refer to a “Bank” as defined in Section 3(a)(6) of the Exchange Act. Finally, the defined term “LCH Cleared Swaps Proprietary Depository Account” would be replaced with the general term of “LCH Proprietary Depository Account”.

Regulation 1 of the Clearing Regulations (Governing Law and Jurisdiction) would be updated to replace references to “FCM” with “FCM/BD” and to provide that the Clearing Regulations shall also be construed in accordance with the Exchange Act.

Regulation 2 (Depository Accounts) of the Clearing Regulations would be

revised to provide for the relevant accounts for SBS. Each FCM/BD would be required to establish and maintain an FCM/BD SBS Client Segregated Depository Account on behalf of its SBS Customers in accordance with applicable provisions of the Exchange Act and SEC regulations, including but not limited to Section 3E and Section 15(c) of the Exchange Act<sup>15</sup> and Exchange Act Rule 15c3–3.<sup>16</sup> The Clearing Regulations would require that the SBS Client Segregated Depository Account be maintained with a Bank in accordance with the Exchange Act and SEC Regulations. The FCM/BD SBS Client Segregated Depository Account maintained by each FCM/BD Clearing Member would be designated as a “Special Reserve Bank Account for the Exclusive Benefit of the Cleared Security-Based Swap Customers” of the FCM/BD Clearing Member as provided in Exchange Act Rule 15c3–3(p).<sup>17</sup> LCH SA would be required to open an LCH SBS Client Segregated Depository Account on behalf of the SBS Customers of FCM/BD Clearing Members in accordance with applicable provisions of the Exchange Act and SEC Regulations. This account shall be maintained with a Bank and shall contain no assets other than Collateral deposited by FCM/BD Clearing Members in connection with the clearing of SBS held in the FCM/BD SBS Client Account Structure on behalf of their SBS Customers. The LCH SBS Client Segregated Depository Account maintained by LCH SA shall be designated as a “Special Clearing Account for the Exclusive Benefit of the Cleared Security-Based Swaps Customers” of the FCM/BD Clearing Member for purposes of the Exchange Act and SEC Regulations.

Regulation 3 (Collateral) of the Clearing Regulations would be updated to provide that securities or cash deposited will be subject to a security interest and held in either an LCH Cleared Swaps Client Segregated Depository Account or an LCH SBS Client Segregated Depository Account, as applicable. Regulation 3 would also be updated to provide that no collateral deposited in an FCM/BD Clearing Member’s LCH Cleared Swaps Client Segregated Depository Account or LCH SBS Client Segregated Depository Account shall be applied on or in respect of payment or satisfaction of any of the FCM/BD Clearing Member’s liabilities to LCH SA as recorded in any

<sup>15</sup> 15 U.S.C. 78c–5, 78o(c).

<sup>16</sup> 17 CFR 240.15c3–3.

<sup>17</sup> 17 CFR 240.15c3–3(p).

of the FCM/BD Clearing Member's Proprietary Accounts.

Regulation 4 (Transfer) of the Clearing Regulations would be amended to provide that if an FCM/BD Clearing Member is a Defaulting Clearing Member, any action taken by LCH SA pursuant to the CDS Clearing Rule Book (including the CDS Default Management Process appended thereto) would be taken in compliance with the U.S. Commodity Exchange Act or the Exchange Act and SEC Regulation, as applicable, and applicable bankruptcy laws regarding the liquidation or transfer of Cleared Swaps carried by an FCM on behalf of its Cleared Swaps Customers or SBS carried by a BD on behalf of its SBS Customers.

Regulation 5 (Security Interest) of the Clearing Regulations would be revised to specify that each FCM/BD Clearing Member grants LCH SA a first security interest in and a first priority and unencumbered first lien upon any and all cash, securities, receivables, rights and intangibles and any other Collateral or assets deposited with or transferred to LCH SA, or otherwise held by LCH SA, including all property deposited in an LCH SBS Client Segregated Depository Account. Regulation 5 would also clarify that notwithstanding such security interest, in no event shall LCH SA's security interest in the Collateral in an LCH SBS Client Segregated Depository Account held on behalf of the FCM/BD Clearing Member's Clients be exercised to satisfy any obligations or liabilities of such FCM/BD Clearing Member other than in connection with obligations or liabilities relating to Cleared Swaps cleared by such FCM/BD Clearing Member on behalf of its Cleared Swaps Customers or relating to SBS cleared by such FCM/BD Clearing Member on behalf of its SBS Customers.

Additional clarifying and conforming changes in the Clearing Regulations would be set forth in the Clearing Regulations, including the use of new defined terms such as FCM/BD Clearing Members, FCM/BD Cleared Transactions, FCM/BD Clients, Cleared Swaps, Cleared Swaps Customers, FCM/BD Swaps Client Financial Account.

## (2) Additional Amendments

Appendix I of the Rule Book (CDS Default Management Process) would be amended to provide that each Non-Defaulting Clearing Member would never be required to bid for more than 100% of the relevant Auction Package. Therefore, Clause 5.4.4, which relates to the calculation of the Minimum Bid Size for each Non-Defaulting Clearing Member required to bid for an Auction

Package, is revised by repealing and replacing the current calculation formula applied by LCH SA to determine the Minimum Bid Size with the following one:  $MBS = \min([A/B] \times C; 100\%)$ . An equivalent amendment is proposed to be made to Clause 5.9.1, which deals with the Recalculated Minimum Bid Size to be determined in the context of a second round of Competitive Bidding, to ensure that each Non-Defaulting Clearing Member will not be required to bid for more than 100% of the relevant Residual Auction Package by adding a reference to the "maximum value for the Bid Credit of the Minimum Bid Size" at the end of indent (i).

Clause 8.1.1 of Appendix 1 of the Rule Book would be amended to remove a reference to the Early Termination Trigger Date at the end of the paragraph for consistency purpose since all payment and delivery obligations in the context of the Early Termination process will be made at the date and times as set out in the following provisions of Clause 8.

Regulation 6 (*Rules Relating to FCM/BD Cleared Swaps Client Segregated Accounts*) of the Clearing Regulations would be also modified to implement CFTC Letter No 19-17 of July 10, 2019 ("Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants") pursuant to which a Derivatives Clearing Organization may permit the Futures Commission Merchant to treat the separate accounts of a customer as accounts of separate entities subject to a number of conditions provided for in that letter. Therefore, Regulation 6(e) would be amended to allow FCM/BD Clearing Members to benefit from this no-action relief regarding the withdrawal of the Cleared Swaps Customer funds by providing that references to "Cleared Swaps Customer" shall include all Cleared Swaps Customers for the same beneficial owner, unless the FCM/BD Clearing Member complies with the relevant conditions set out in CFTC Letter No. 19-17 of July 10, 2019. Other technical and conforming changes to Regulation 6 are included in Regulation 6(a) and 6(e).

In addition to the foregoing changes, the amendments to the Rule Book, Clearing Supplement, Procedures and Clearing Regulations also contain typographical corrections, cross-references corrections, clean-up changes, and similar technical corrections as well as various conforming references to the new or revised defined terms.

## (b) Statutory Basis

LCH SA believes that the proposed rule change and the extension of the CDS Clear Service in respect of Single-Name CDS for FCM/BD Clients is consistent with the requirements of Section 17A of the Exchange Act<sup>18</sup> and the regulations thereunder, including the standards under Exchange Act Rule 17Ad-22.<sup>19</sup> Section 17A(b)(3)(F) of the Exchange Act<sup>20</sup> 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 derivative agreements, contracts, and transactions. As noted above, the proposed rule change is designed to provide for the clearing of Single-Name CDS to FCM/BD Clients. From a financial risk management and margin requirements and an operational point of view, clearing Single-Name CDS would not require changes to the existing operational procedures as Single-Name CDS transactions are already cleared by LCH SA for Clearing Members admitted as CCMs for their own account and for the account of their Non U.S. Clients. Therefore, LCH SA believes that the clearing of Single-Name CDS for U.S. Clients and the related changes described herein are consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions, in accordance with Section 17A(b)(3)(F) of the Exchange Act.<sup>21</sup>

In addition, the proposed amendments also satisfy the relevant requirements of Exchange Act Rule 17Ad-22 (e)(1), (4), (13), (14), (17) and (18).<sup>22</sup> Exchange Act Rule 17Ad-22(e)(1)<sup>23</sup> requires that a 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. The proposed rule change would modify LCH SA's existing rules and procedures to clearly define the requirements for Single-Name CDS and establish a legal framework for LCH SA to clear Single-Name CDS on behalf of U.S. Clients. The proposed rule change would also make certain clarifying and conforming changes in the Rule Book. LCH SA therefore

<sup>18</sup> 15 U.S.C. 78q-1.

<sup>19</sup> 17 CFR 240.17Ad-22.

<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>21</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>22</sup> 17 CFR 240.17Ad-22(e)(1), (4), (13), (14), (17) and (18).

<sup>23</sup> 17 CFR 240.17Ad-22(e)(1).

believes that the proposed rule change is consistent with the requirements of Exchange Act Rule 17Ad-22(e)(1).<sup>24</sup>

Exchange Act Rule 17Ad-22(e)(4)<sup>25</sup> requires that a 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 and those arising from its payment, clearing, and settlement processes. Exchange Act Rule 17Ad-22(e)(14)<sup>26</sup> requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to enable, when the covered clearing agency provides central counterparty services for SBS or engages in activities that the Commission has determined to have a more complex risk profile, the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant. Further, Exchange Act Rule 17Ad-22(e)(13)<sup>27</sup> requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations, by, at a minimum, requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto. Finally, Exchange Act Rule 17Ad-22(e)(17)<sup>28</sup> requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by, among other things, identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.

Consistent with Exchange Act Rule 17Ad-22(e)(4),<sup>29</sup> LCH SA will apply its existing practices, policies, and procedures with respect to the

identification, measuring, monitoring, and management of its credit exposures to Clearing Members for Single-Name CDS being cleared on behalf of U.S. Clients, and which, among other things, give LCH SA the discretion to suspend a Clearing Member or required Credit Quality Margin to be paid where LCH SA deems it necessary to contain its exposure.

LCH SA will apply its existing margin methodology, segregation requirements and existing default management policies and procedures for Single Name CDS to be cleared on behalf of U.S. Clients, including the procedures for participation in a competitive auction process for a Defaulting Clearing Member's transactions and the appointment of at least five Clearing Members to be part of the CDS Default Management Group, to allow LCH SA to take timely action to contain losses and liquidity demands, in accordance with Exchange Act Rule 17Ad-22(e)(13).<sup>30</sup> Similarly, in providing clearing for Single-Name CDS on behalf of U.S. Clients, LCH SA will apply its existing practices, policies, and procedures with respect to the portability of accounts, including as to the portability of accounts from Defaulting Clearing Members to an appointed Backup Clearing Member, allowing the protection of collateral from Clearing Member default or insolvency consistent with Exchange Act Rule 17Ad-22(e)(14).<sup>31</sup> LCH SA will also apply its existing practices, policies, and procedures with respect to the management of operational risk in providing clearing for Single-Name CDS on behalf of U.S. Clients and consistent with Exchange Act Rule 17Ad-22(e)(17).<sup>32</sup> Finally, Exchange Act Rule 17Ad-22(e)(18) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct, and where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis. As noted above, the proposed rule change would extend existing participation requirements to persons proposing to enter into Single-

Name CDS on behalf of their FCM/BD Clients and make clear that such persons must have operational capacity and the applicable regulatory registrations in respect of Single-Name CDS on behalf of their FCM/BD Clients. Therefore, LCH SA believes that the proposed rule change is consistent with the requirements of Exchange Act Rule 17Ad-22(e)(18).<sup>33</sup> Further, the membership requirements applicable to persons proposing to enter into Single-Name CDS on behalf of their FCM/BD Clients are designed to identify persons with sufficient operational capacity and expertise in relation to Single-Name CDS; such requirements or criteria apply to every and all persons applying to enter into Single-Name CDS clearing service equally and, as such, are not designed to permit unfair discrimination in the admission of participants or among participants in the use of LCH SA, in accordance with Section 17A(b)(3)(F) of the Exchange Act.<sup>34</sup>

#### *B. Clearing Agency's Statement on Burden on Competition*

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>35</sup> LCH SA does not believe that its clearing of Single-Name CDS on behalf of FCM/BD Clients will adversely affect competition in the trading market for those contracts or CDS generally. By allowing LCH SA to clear Single-Name CDS for FCM/BD Clients, market participants will have additional choices on where to clear and which products to use for risk management purposes, which, in turn, will promote competition and further the development of CDS for risk management. In addition, LCH SA will apply its existing fair and open access criteria to the clearing of Single-Name CDS on behalf of FCM/BD Clients and will apply the same criteria to every person who proposes to enter into the clearing of Single-Name CDS on behalf of their Clients. Such criteria are designed to identify persons with sufficient operational capacity and expertise in relation to Single-Name CDS as part of the membership requirements that are necessary and appropriate for LCH SA to manage the risk arising from allowing persons to transact in Single-Name CDS. Accordingly, LCH SA does not believe that the proposed rule change will

<sup>24</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>25</sup> 17 CFR 240.17Ad-22(e)(4).

<sup>26</sup> 17 CFR 240.17Ad-22(e)(14).

<sup>27</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>28</sup> 17 CFR 240.17Ad-22(e)(17).

<sup>29</sup> 17 CFR 240.17Ad-22(e)(4).

<sup>30</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>31</sup> 17 CFR 240.17Ad-22(e)(14).

<sup>32</sup> 17 CFR 240.17Ad-22(e)(17).

<sup>33</sup> 17 CFR 240.17Ad-22(e)(18).

<sup>34</sup> 15 U.S.C. 78q-1(b)(3)(F).

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



impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-LCH SA-2021-001 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-LCH SA-2021-001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at: <https://www.lch.com/resources/rulebooks/proposed-rule-changes>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-LCH SA-2021-001 and should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**J. Matthew DeLesDernier**,  
*Assistant Secretary*.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91689; File No. SR-CBOE-2021-025]

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 5.37 and Rule 5.38 in Connection With Allocations at the Conclusion of the Exchange's Automated Improvement Mechanism ("AIM") and Complex AIM ("C-AIM") Auctions**

April 27, 2021.

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 April 14, 2021, 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, II, and III below, which Items have been prepared by the Exchange.

<sup>36</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.

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 5.37 and Rule 5.38 in connection with allocations at the conclusion of the Exchange's Automated Improvement Mechanism ("AIM") and Complex AIM ("C-AIM") auctions. The text of the proposed rule change is provided in Exhibit 5.

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.

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

1. Purpose

The Exchange proposes to adopt a Priority Order Plus status in connection with the allocation of exclusively listed<sup>3</sup> index option classes, as designated by the Exchange, at the conclusion of an AIM and C-AIM auction.

The AIM and C-AIM auctions are electronic auctions intended to provide an Agency Order with the opportunity to receive price improvement (over the

<sup>3</sup> An "exclusively listed option" is an option that trades exclusively on an exchange because the exchange has an exclusive license to list and trade the option or has the proprietary rights in the interest underlying the option. An exclusively listed option is different than a "singly listed option," which is an option that is not an "exclusively listed option" but that is listed by one exchange and not by any other national securities exchange.