

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

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Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101654; File No. SR-LCH SA-2024-002]

Self-Regulatory Organizations; LCH SA; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 and Partial Amendment No. 1, Relating to the CDS Clear Select Membership Model

November 19, 2024.

I. Introduction

On March 13, 2024, 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”),¹ and Rule 19b-4 thereunder,² a proposed rule change (the “Proposed Rule Change”) to amend its CDS Clearing Rule Book (the “Rule Book”) and CDS Clearing Procedures (“Procedures”). The Proposed Rule Change was published for comment in the **Federal Register** on March 28, 2024.³

On May 9, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change, until June 26, 2024.⁵ On June 21, 2024, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁶ to determine whether to approve or disapprove the Proposed Rule Change.⁷ On September 18, 2024, the Commission designated a longer period for commission action on

proceedings to determine whether to approve or disapprove the Proposed Rule Change, until November 23, 2024.⁸ On October 11, 2024, LCH SA filed Amendment No. 1 to the Proposed Rule Change.⁹ On October 17, 2024, LCH SA filed Partial Amendment No. 1 to the Proposed Rule Change.¹⁰ Notice of Amendment No. 1 and Partial Amendment No. 1 were published in the **Federal Register** on October 24, 2024.¹¹ The Commission has not received any comments on the Proposed Rule Change, as modified by Amendment No. 1 and Partial Amendment 1. For the reasons discussed below, the Commission is approving the Proposed Rule Change, as modified by Amendment No. 1 and Partial Amendment No. 1 (hereinafter defined as “Proposed Rule Change”) on an accelerated basis.

II. Description of the Proposed Rule Change

LCH SA is a clearing agency registered with the Commission. Through its CDS Clear business unit, LCH SA provides central counterparty services for security-based swaps, including credit default swaps, and options on credit default swaps.¹² LCH SA provides these central counterparty services to its Clearing Members.¹³ Some of these Clearing Members provide clearing services for clients.

LCH SA has two different types of Clearing Members, General Members and Select Members, with different obligations to LCH SA. General Members must participate in competitive bidding for auction packages, must submit prices to LCH SA, and may provide client clearing

services to Affiliated Firms¹⁴ and non-Affiliated Firms.¹⁵ General Members also must nominate representatives for the CDS Default Management Committee and CDS Default Management Group.¹⁶

Select Members, on the other hand, must participate in competitive bidding only for a subset of Auction Packages and may opt out of submitting prices.¹⁷ Select Members also may provide client clearing services,¹⁸ but only for Affiliated Firms. Finally, while Select Members also must nominate representatives for the CDS Default Management Committee and CDS Default Management Group,¹⁹ as noted, their participation in competitive bidding is limited to a subset of Auction Packages.²⁰

The obligations of General Members and Select Members differ because LCH SA designed the two membership categories with different potential members in mind. LCH SA created the

¹⁴ The Rule Book defines an Affiliated Firm as any Affiliate or any entity that is otherwise member to the same institutional protection scheme (as defined in the CRR) as the Clearing Member. The CRR is defined in the Rule Book as Regulation (EU) No. 575/2013 and certain related regulations and standards. LCH SA CDS Clearing Rule Book Chapter 1 Article 1.1.1 An institutional protection scheme under the CRR is a contractual or statutory liability arrangement that protects those institutions and in particular ensures their liquidity and solvency to avoid bankruptcy where necessary. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, Article 113(7), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0575>.

¹⁵ Notice, 89 FR at 21579.

¹⁶ *Id.* at 21581.

¹⁷ Notice, 89 FR at 21579, 81.

¹⁸ Select Members originally were not allowed to offer client clearing services. See LCH SA, Self Certification Letter, Select Membership, available at <https://www.cftc.gov/sites/default/files/filings/orgrules/16/07/rule070816lchsadco001.pdf>. In 2019, the Commission approved amendments to the Rule Book and Procedures to allow Select Members to provide client clearing services to Affiliated Firms. See Securities Exchange Act Release No. 86376 (July 15, 2019), 84 FR 34955, 34957 (July 19, 2019) (File No. SR-LCH SA-2019-003). LCH SA proposed these to allow client clearing limited in this manner because a Select Member requested the ability to offer client clearing to an affiliate. LCH SA provided background and analysis related to the Select Membership model in confidential Exhibit 3.3 to the Proposed Rule Change, which LCH SA added to the Proposed Rule change with Amendment No. 1.

¹⁹ Notice, 89 FR at 21581.

²⁰ Currently, Select Members and General Members must nominate representatives for the CDS Default Management Committee and CDS Default Management Group because both Select Members and General Members currently must participate in auctions to some extent. Notice, 89 FR at 21581; LCH SA provided background and analysis related to the Select Membership model in confidential Exhibit 3.3 to the Proposed Rule Change, which LCH SA added to the Proposed Rule change with Amendment No. 1.

⁸ Securities Exchange Act Release No. 101094 (Sept. 18, 2024), 89 FR 77919 (Sept. 24, 2024) (File No. SR-LCH SA-2024-002).

⁹ Amendment No. 1 modified the Proposed Rule Change to require a Select Member to participate in competitive bidding in default auctions and contribute end-of-day prices should its margins exceed a predetermined threshold over a designated time. This requirement is discussed in Part II of this Order. It also included an Exhibit 3.3 to the filing showing LCH SA’s responses to an SEC request for information related to the Select Membership model.

¹⁰ Partial Amendment No. 1 fixed errors in the Exhibit 1A filed with Amendment No. 1 by replacing the Statutory Basis and Burden on Competition sections of the amended Exhibit 1A with the text of the Statutory Basis and Burden on Competition sections of the amended 19b-4 narrative.

¹¹ Securities Exchange Act Release No. 101383 (Oct. 18, 2024), 89 FR 84972 (Oct. 24, 2024) (File No. SR-LCH SA-2024-002) (“Amended Notice”).

¹² *What We Clear*, <https://www.lch.com/services/cdsclear/what-we-clear> (last visited Sept. 27, 2024).

¹³ Capitalized terms not otherwise defined herein have the meanings assigned to them in the CDS Clear Rule Book or CDS Clearing Procedures, as applicable.

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 99847 (Mar. 22, 2024), 89 FR 21579 (Mar. 28, 2024) (File No. SR-LCH SA-2024-002) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ Securities Exchange Act Release No. 100094 (May 9, 2024), 89 FR 42515 (May 15, 2024) (File No. SR-LCH SA-2024-002).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ Securities Exchange Act Release No. 100394 (June 21, 2024), 89 FR 53685 (June 27, 2024) (File No. SR-LCH SA-2024-002).

Select Member tier in 2016 to offer CDS Clear direct membership to institutions that met the membership criteria, but did not want to be direct members due to the Competitive Bidding and price contribution obligations of such members.²¹ These institutions tend to be price takers with smaller portfolios.²² They prefer avoiding Competitive Bidding as General Members because they may not have the risk-taking capabilities to manage positions that they do not actively trade but may win in an auction.²³ Similarly, they prefer avoiding price contribution as General Members because they may only actively transact in a limited set of products, thereby making it difficult to provide data for all of their open positions.²⁴ LCH SA views price contribution as less critical for these institutions because, as price takers, any prices the Select Members might submit to LCH SA likely would have already been provided to LCH SA by CDS Clear General Members.²⁵

Some prospective Clearing Members may wish to provide clearing services to non-affiliated firms but they may not have the capacity to participate in Competitive Bidding or submit Market Data.²⁶ In order to allow prospective Clearing Members that do not have the capacity to participate in Competitive Bidding or submit Market Data to provide clearing services to non-affiliated firms, without becoming General Members, LCH SA proposes changes to adjust those requirements for Select Members, and make other related changes.²⁷

²¹ LCH SA, Self Certification Letter, Select Membership, available at, <https://www.cftc.gov/sites/default/files/filings/orgrules/16/07/rule070816lchsadco001.pdf>.

²² Securities Exchange Act Release No. 82076 (Nov. 14, 2017), 82 FR 55139, 55140 (Nov. 20, 2017) (File No. SR-LCH SA-2017-008); Notice, 89 FR at 21583.

²³ LCH SA provided background and analysis related to the Select Membership model in confidential Exhibit 3.3 to the Proposed Rule Change, which LCH SA added to the Proposed Rule change with Amendment No. 1.

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²⁶ Notice, 89 FR at 21579.

²⁷ *Id.* Despite these changes, Select Members must still satisfy the membership requirements found in Section 2.2.1 of the LCH SA CDS Clearing Rule Book, the same as General Members. Pursuant to Section 2.2.1, Select Members must, among other things, comply with applicable law, be subject to supervision by competent regulatory authorities,

Although these changes will allow some Select Members to clear for non-affiliated firms without participating in Competitive Bidding or submitting Market Data, these changes will not necessarily undermine Competitive Bidding or LCH SA's collection of Market Data. This is because Select Membership will not be overall more favorable than General Membership due to the Proposed Rule Change. Specifically, while Select Members will have fewer obligations than General Members and still be able to clear for clients, LCH SA's fee grid and Risk Management Framework, which the Proposed Rule Change does not affect, make client clearing cheaper for General than Select Members, as described below.

Specifically, with respect to the fee grid, currently only General Members may subscribe to the unlimited tariff, which allows General Members to clear an unlimited number of trades for their own account for an annual fixed fee.²⁸ Further, General Members that pay a variable tariff will have lower fixed and variable fees than Select Members.²⁹ The Proposed Rule Change would not alter this arrangement.³⁰

With respect to the Risk Management Framework, General Members who clear for clients may be able to give their clients the same liquidity margin as other General Members. Select Members, on the other hand, may incur a higher liquidity margin, including a liquidity concentration charge, for large positions, including large client positions.³¹ The Proposed Rule Change would not alter this liquidity margin or otherwise amend the Risk Management Framework.

To further ensure that a sufficient number of Clearing Members participate in Competitive Bidding and submit Market Data, as discussed below, the Proposed Rule Change would guarantee that at least six Clearing Member Financial Groups³² participate in default auctions and submit Market Data

meet minimum capital requirements, and satisfy a credit risk assessment. See LCH SA CDS Clearing Rule Book, Section 2.2.1.

²⁸ Notice, 89 FR at 21579.

²⁹ *Id.* at 21580.

³⁰ *Id.*

³¹ *Id.*

³² The Rule Book indicates that a Person shall belong to the same Financial Group as (i) any entity controlled, directly or indirectly by the Person; (ii) any entity that controls, directly or indirectly the Person; or (iii) any entity directly or indirectly under common control with the Person. LCH SA CDS Clearing Rule Book, Chapter 1 Article 1.1.1. Currently, CDS Clear Financial Groups include anywhere from 1 to 4 Clearing Members. *Member Search*, <https://www.lseg.com/en/post-trade/clearing/membership/member-search#t-sa> (last visited Oct. 25, 2024).

by requiring a Select Member to participate in those processes if the margins of its Financial Group exceed a predetermined threshold over a designated time.³³

LCH SA's proposed changes to Select Membership can be grouped into five categories.³⁴ The first category would allow Select Members to provide client clearing services to non-affiliated firms. The second and third categories would relate to Select Members' ability to elect to participate in Competitive Bidding and submission of end-of-day prices. The fourth category would address mandatory participation in Competitive Bidding and submission of end-of-day prices by Select Members. The fifth category would create a new form through which Select Members may make certain elections, including to participate in Competitive Bidding and submit Market Data.

A. Non-Affiliated Firm Clearing for Select Members

As noted above, the Rule Book does not allow Select Members to provide CDS Client Clearing Services to non-affiliated firms. Current Article 5.1.1.2 of the Rule Book addresses conditions upon which CDS Client Clearing Services may be provided by a "CCM"³⁵ to its CCM Clients. Article 5.1.1.2(i) indicates that if a CCM is a Select Member, it shall not provide CDS Client Clearing Services to any CCM Client other than its Affiliated Firms. Similarly, Article 6.1.1.2 of the Rule Book addresses conditions upon which FCM/BD Clearing Members³⁶ may

³³ As described below, the Proposed Rule Change would require Select Member participation in Competitive Bidding and submission of Market Data when the Group Total Margin Percentage for the Select Member's Financial Group exceeds the Participation Threshold for sixty consecutive clearing days. The Participation Threshold is the percentage which is equal to the lower of 5% and the sixth largest Group Total Margin Percentage among all the Group Total Margin Percentages calculated in respect of each Financial Group to which one or more Clearing Members belong. As noted above, General Members must participate in Competitive Bidding and submit Market Data.

³⁴ LCH SA also proposes changes to correct cross-references, grammar, and typographical errors, and provide additional clarification.

³⁵ The Rule Book defines a CCM as any legal entity admitted as a Clearing Member in accordance with the CDS Clearing Rules at LCH SA and a party to the CDS Admission Agreement, including General Members and Select Members. LCH SA CDS Clearing Rule Book Chapter 1 Article 1.1.1.

³⁶ The Rule Book defines FCM/BD Clearing Members as any FCM, BD or legal entity that is both FCM and BD that has been admitted as a clearing member in accordance with the CDS Clearing Rules and is a party to the CDS Admission Agreement and which has not elected to become a CCM, provided that if such FCM/BD Clearing Member wishes to provide CDS Client Clearing Services described in Title VI, it shall either (i) be a General Member or (ii) provide such CDS Client Clearing Services to its

provide CDS Clearing Services. Article 6.1.1.2(i) states that if an FCM/BD Clearing Member is a Select Member, it shall not provide CDS Client Clearing Services to any FCM/BD Client other than its Affiliated Firms. LCH SA proposes deleting Articles 5.1.1.2(i) and 6.1.1.2(i), since these provisions limit the entities to which Select Members may provide client clearing services to Affiliated Firms.³⁷

To clarify that Select Members may offer CDS Client Clearing Services to any client, including non-affiliates, LCH SA proposes adjusting certain defined terms, including the definition of Select Member.³⁸ Currently, the Rule Book defines Select Member as a CCM or FCM/BD Clearing Member that does not provide CDS Client Clearing Services to clients other than Affiliated Firms and has been admitted by LCH SA as a Select Member in accordance with Section 1 of the Procedures. LCH SA proposes deleting the text from the definition, noting that Select Members do not provide CDS Client Clearing Services to clients other than Affiliated Firms. LCH SA also proposes deleting certain text from the Rule Book highlighting the current status quo—that General Members may provide client clearing services to non-affiliated firms, while Select Members may not do so—in the definitions of CCM and FCM/BD Clearing Member.

Under LCH SA's proposal to allow Select Members to provide CDS Client Clearing Services to Clients other than Affiliated Firms, there is no need to define the term Affiliated Firm. This term was only used with respect to the current Select Member model.³⁹ As such, LCH SA proposes deleting the defined term Affiliated Firm from the Rule Book.

Similarly, LCH SA proposes updating certain references that are no longer necessary or that can no longer exist because of its proposal to permit Select Members to provide clearing services to any client and the deletion of the defined term Affiliated Firm.⁴⁰ LCH SA accordingly proposes deleting references to Affiliated Firms in Article 5.1.1.1 of the Rule Book and in Article 4.2.7.2 of the Rule Book.⁴¹ As noted above, in 2019, LCH SA made several changes to its Rule Book to allow and account for Select Members providing

client clearing services to Affiliated Firms. The proposed changes to Articles 5.1.1.1 and 4.2.7.2 eliminate these changes and work to make those provisions consistent with LCH SA's new requirements for Select Members. Separately, in some provisions of its Rule Book, LCH SA proposes replacing the term Affiliated Firm with the term Affiliate⁴² rather than deleting it entirely because in certain places, LCH SA refers to Affiliates of a Clearing Member. Specifically, LCH SA would make this change in the definitions of CCM Indirect Gross Segregated Account Client, CCM Indirect Net Segregated Account Client, CCM Individual Segregated Account Client, and FCM/BD Client as well as in Article 6.1.1.2. The proposed changes to the definitions for CCM Indirect Gross Segregated Account client, CCM Indirect Net Segregated Account Client, and CCM Individual Segregated Account Client reverse 2019 changes made to account for Select Members ability to clear for Affiliated Firms. The proposed change to Article 6.1.1.2's introduction makes that provision consistent with Article 6.1.1.1.⁴³ Further, the changes to Article 6.1.1.2 in general account for the fact that, after changes to its Select Member tier, without the need for the broader term Affiliated Firm, LCH SA can revert back to the use of the term Affiliate.

Finally, given the proposal to allow Select Members to clear for non-affiliated firms as General Members can, LCH SA proposes changes to apply certain existing requirements to both General Members and Select Members without distinguishing between the two.⁴⁴ In Articles 2.2.1.1(iv) and 2.2.1.1(v) of the Rule Book, LCH SA proposes changes that would make

certain conditions to becoming a Clearing Member applicable to all Applicants wishing to provide CDS Client Clearing Services, instead of Applicants wishing to be admitted as a General Member or as a Select Member providing CDS Client Clearing Services to Affiliated Firms. Similarly, LCH SA proposes changes to Article 2.2.2.1(iv) of the Rule Book that would make certain continuing obligations of Clearing Members applicable to Clearing Members which have elected to provide CDS Client Clearing Services generally, rather than only to General or Select Members that have elected to provide CDS Client Clearing Services to Affiliated Firms. LCH SA also proposes deleting text from Article 4.2.7.2 of the Rule Book limiting Clearing Members authorized to provide Markit LCH Settlement Prices under certain conditions to General Members, or Select Members that opt to be Price Contribution Participants and that provide CDS Client Clearing Services to Affiliated Firms.⁴⁵ After making this change, all Clearing Members, as opposed to just a subset of Clearing Members, would be authorized to provide Markit LCH Settlement Prices to certain clients under certain conditions.

B. Participation in Competitive Bidding

In the event of a Clearing Member default, LCH SA shall auction off the defaulting Clearing Member's positions.⁴⁶ Currently, the LCH SA CDS Default Management Process requires all Non-Defaulting Clearing Members, including Select Members, to participate in Competitive Bidding during such auctions, with a few exceptions.⁴⁷ For example, a Select Member does not need to bid for any Auction Package if that Auction Package contains a product that the Select Member does not transact

Affiliated Firms only. LCH SA CDS Clearing Rule Book Chapter 1 Article 1.1.1.

³⁷ Notice, 89 FR at 21580.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 21580–81.

⁴¹ *Id.*

⁴² The Rule Book defines Affiliate as any entity that controls, directly or indirectly, the Clearing Member, any entity controlled, directly or indirectly, by the Clearing Member or any entity directly or indirectly under common control with such Clearing Member. Affiliated Firm is defined as any Affiliate or any entity that is otherwise member to the same institutional protection scheme (as defined in the CRR as the Clearing Member). LCH SA CDS Clearing Rule Book Chapter 1 Article 1.1.1.

⁴³ Article 6.1.1.1 provides that an FCM/BD Clearing Member may not enter into Cleared Transactions for the account of an Affiliate, unless such FCM/BD Clearing Member first provides LCH SA with an opinion of counsel, in form and content acceptable to LCH SA, confirming that entry into such Cleared Transactions would not be contrary to Applicable Law. The proposed Article 6.1.1.2 would provide that an FCM/BD Clearing Member may provide CDS Clearing Services to a Client or, if permitted pursuant to Article 6.1.1.1 an Affiliate, rather than an Affiliated Firm, on any terms and conditions mutually agreed to by it and such Person.

⁴⁴ Notice, 89 FR at 21580.

⁴⁵ A Price Contribution Participant is a Select Member that has opted for submitting Market Data in accordance with Section 5 of the Procedures or each General Member, or in each case, its Price Contribution Delegate. LCH SA CDS Clearing Rule Book Chapter 1 Article 1.1.1.

⁴⁶ Specifically, where there is an Event of Default with respect to a Clearing Member, LCH SA will auction "Auction Packages." LCH SA CDS Clearing Rule Book, Appendix 1, Clause 2.1. An Auction Package is defined as a portfolio of Auction Transactions reflecting one or more Cleared Transactions registered in the name of the Defaulting Clearing Member, together with any connected hedging trades that have been concluded by LCH SA through Hedging. LCH SA CDS Clearing Rule Book, Appendix 1, Clause 1.1.

⁴⁷ These exceptions are described in Clause 5.4.1 of the CDS Default Management Process in the Rule Book.

in,⁴⁸ as set out in that Select Member's Product Family Form.⁴⁹

Even with this exception, LCH SA has found that some Select Members may not have the operational capacity to participate in default auctions.⁵⁰ LCH SA believes that it does not need certain Select Members to participate in Competitive Bidding because Select Members have had minimal impact on winning bids during previously conducted fire drills.⁵¹ Accordingly, LCH SA is now proposing to make participation in Competitive Bidding optional for Select Members, subject to a minimum participation requirement, as discussed below.⁵²

Specifically, LCH SA proposes to revise current Article 2.2.0.5 of the Rule Book to alter which Select Members are required to participate in Competitive Bidding. Further, these revisions will clarify that a Select Member, under circumstances where it is not required to participate in Competitive Bidding as described in Section D below, may opt to participate in Competitive Bidding pursuant to Clause 5 of the CDS Default Management Process, subject to Article 2.2.1.1(xi) of the Rule Book.⁵³ Related to this change, LCH SA will also clarify that a Select Member that elects, or is required, to participate in Competitive Bidding will be subject to the provisions

⁴⁸ Specifically, a Select Member does not need to engage in Competitive Bidding for Auction Packages containing any Cleared Transaction that does not belong to any Product Family as set out in that Select Member's Product Family Form. The Rule Book defines Product Family as each category of CDS or Index Swaption for which LCH SA provides CDS Clearing Services and that may be selected by a Select Member in its Product Family Form. LCH SA CDS Clearing Rule Book, Chapter 1 Article 1.1.1.

⁴⁹ The Rule Book defines Product Family Form as, in respect of a Select Member, the form referencing the Product Families that a Select Member intends to clear through LCH SA, as amended from time to time in accordance with Section 5 of the Procedures. *Id.*

⁵⁰ Notice, 89 FR at 21579. Specifically, LCH SA notes that Select Members have historically required assistance managing default files and have routinely requested assistance addressing questions during fire drill exercises. *Id.* at 21582 n19.

⁵¹ LCH SA provided background and analysis related to past fire drill bidding in confidential Exhibit 3.2 and background and analysis related to the Select Membership model in confidential Exhibit 3.3 to the Proposed Rule Change. Confidential Exhibit 3.2 was a part of the originally filed Proposed Rule Change. Confidential Exhibit 3.3 was added to the Proposed Rule Change with Amendment No. 1.

⁵² As discussed in Section D below, LCH SA recognizes that changes to its membership tiers require that LCH SA maintains sufficient participation in Competitive Bidding and the price contribution process. *See* Amended Notice, 89 FR at 84975.

⁵³ As is noted in footnote 59, the Proposed Rule Change would delete current Article 2.2.0.4. Thus, current Article 2.2.0.5 and proposed Article 2.2.0.4 are the same provision.

of the CDS Clearing Documentation that apply to any Non-Defaulting Clearing Member that must participate in Competitive Bidding for each Auction Package, as a General Member will be.

To further effectuate this change, LCH SA also proposes revisions to Clause 5.4.1(ii) of the CDS Default Management Process, which is found in Appendix 1 to the Rule Book. Clause 5.4.1 identifies exceptions to the requirement that all Non-Defaulting Clearing Members participate in Competitive Bidding. The Proposed Rule Change would add an exception from the Competitive Bidding requirement for Select Members that are not required to participate in Competitive Bidding under proposed Article 2.2.0.4, and that also have not elected to participate in Competitive Bidding by following the requirements of proposed Article 2.2.0.4 within one hour of the declaration of an Event of Default by LCH SA.⁵⁴

LCH SA proposes to revise certain other provisions—specifically, those related to conditions on Applicants wishing to be admitted as Clearing Members—to reflect that Competitive Bidding will be elective for Select Members going forward, subject to the minimum participation requirement described below. Article 2.2.1.1(xi) of the Rule Book currently requires a Clearing Member Applicant to participate in the implementation of the CDS Default Management Process or demonstrate that it has an associated entity or an LCH Approved Outsourcing Agent that can successfully do so.⁵⁵ It also requires a Clearing Member Applicant to participate in (and satisfy LCH SA's requirements with respect to the carrying out of) regular fire drills run by LCH SA from time to time in accordance with the Rule Book, or demonstrate that it has an associated entity or an LCH Approved Outsourcing Agent that can successfully do so. The proposed rule change would add language to Article 2.2.1.1(xi) specifying that it applies to an Applicant seeking to be admitted as a General Member, or as a Select Member that will elect to participate in Competitive Bidding. Relatedly, the proposed rule change would amend Section 1.1(d) of the Procedures to note that an Applicant must accept that, during the review

⁵⁴ As noted above, under the LCH SA's proposal, a Select Member that voluntarily chooses to participate in Competitive Bidding must abide by its obligations under Article 2.2.1.1(xi) and elect to participate in Competitive Bidding in order to opt into Competitive Bidding.

⁵⁵ Associated entities under Article 2.2.1.1(xi) would include affiliated Clearing Members or alternatively a non-clearing member Affiliate that clears through the Clearing Member.

process, LCH SA is entitled to request that the Applicant applying to be a Select Member and wishing to participate in Competitive Bidding must pass LCH SA-administered tests to ensure that the Applicant can successfully participate in Competitive Bidding.

Because certain Select Members will no longer be required to participate in Competitive Bidding, they also will no longer be required to use the Product Family Form. The Product Family Form is used by Select Members to identify the Product Families that a Select Member intends to clear through LCH SA.⁵⁶ A form identifying the Product Families that a Select Member intends to clear through LCH SA is currently necessary because Select Members only must participate in Competitive Bidding for Auction Packages if the Cleared Transactions in the Auction Package all belong to Product Families set out in the Select Member's Product Family Form.⁵⁷ Under the Proposed Rule Change, because Select Members are no longer required to participate in Competitive Bidding, subject to the minimum participation requirement discussed below, there is no longer a need for Select Members to use the Product Family Form.⁵⁸ As such, LCH SA proposes deleting the defined terms Product Family and Product Family Form from the Rule Book, and proposes deleting references to the terms Product Family and Product Family Form in Articles 2.2.0.4,⁵⁹ 3.1.6.2(ii),⁶⁰ 3.1.6.5, and Appendix 1 Clauses 5.4.1(ii)⁶¹ and 6.1 of the Rule Book.⁶²

⁵⁶ LCH SA CDS Clearing Rule Book Chapter 2 Article 2.2.0.4.

⁵⁷ Notice, 89 FR at 21580.

⁵⁸ *Id.*

⁵⁹ LCH SA proposes deletion of this entire provision. This provision discusses the use of the Product Family Form and updating the Product Family Form. From this point forward references to Article 2.2.0.4 will be to the proposed Article 2.2.0.4/current Article 2.2.0.5 of the Rule Book.

⁶⁰ LCH SA proposes deletion of text noting that LCH SA will inform relevant Clearing Members of, in respect of a Select Member, any cleared Transaction, as a result of the novation process pursuant to Article 3.1.6.1, that does not belong to any of the Product Families indicated in the Product Family Form of that Select Member.

⁶¹ LCH SA proposes the deletion of text in this provision indicating that a Non-Defaulting Clearing Member is not required to participate in Competitive Bidding for an Auction Package containing any Cleared Transaction that does not belong to any Product Family as set out in that Select Member's Product Family Form in force on the Business Day immediately preceding the CDS Post Default Period.

⁶² LCH SA proposes the deletion of text in this provision highlighting circumstances under which and how a Product Family Form will be updated. With the deletion of this text there is also no need for the references to General Members and Select Members in Clause 6.1.2(ii)(a) which acknowledge

For a similar reason, the Proposed Rule Change would delete Article 3.1.6.8 of the Rule Book. This provision is no longer needed because it describes how LCH SA would deal with situations where LCH SA registers a Cleared Transaction, in respect of a Select Member, which does not belong to any of the Product Families indicated in the Select Member's Product Family Form.⁶³

Finally, because Select Members' obligations with respect to Competitive Bidding would change and therefore, their perspective would provide less added value with respect to the design of LCH SA's liquidation strategy than it did in the past, Select Members also will no longer be required to nominate representatives to the CDS Default Management Committee or Group.⁶⁴

The CDS Default Management Committee meets at least quarterly, primarily to ensure continued preparedness for an Event of Default. The Default Management Committee's duties include participating in regular fire drills in relation to the CDS Default Management Process, keeping under review the terms of reference for both the CDS Default Management Committee and the CDS Default Management Group, determining the provisions of the CDS Default Management Guidance Manual that will supplement the principles set out in the CDS Default Management Process, and assisting the members of the CDS Default Management Group in implementing the CDS Default Management Process.⁶⁵ Appendix 1, Clause 10.2 of the Rule Book indicates that the CDS Default Management Committee shall consist of representatives nominated by each of the Clearing Members.

The CDS Default Management Group meets as soon as reasonably practicable following notification by LCH SA that a Clearing Member is the subject of an Event of Default. This group assists LCH SA in the implementation of the CDS Default Management Process.⁶⁶ Appendix 1, Clause 11.2.2 of the Rule Book notes that each Clearing Member

the differences between Select Members and General Members under the current Rule Book. Notice, 89 FR at 21580. Thus, LCH SA proposes to delete references to the terms General Member and Select Member in Clause 6.1.2(ii)(a).

⁶³ Notice, 89 FR at 21580.

⁶⁴ LCH SA provided background and analysis related to the Select Membership model in confidential Exhibit 3.3 to the Proposed Rule Change, which LCH SA added to the Proposed Rule Change with Amendment No. 1.

⁶⁵ LCH SA CDS Clearing Rule Book Appendix 1 Clause 10.1.

⁶⁶ LCH SA CDS Clearing Rule Book Appendix 1 Clause 11.1.

is required to notify LCH SA of at least two representatives that can be called upon to participate as a member of the CDS Default Management Group.

LCH SA proposes changes to current Article 2.2.0.5 (proposed Article 2.2.0.4) to give Select Members the option to nominate representatives to the CDS Default Management Committee and to the CDS Default Management Group. LCH SA proposes conforming changes to Appendix 1, Clauses 10.2.1 and 11.2.2 of the Rule Book, to clarify that going forward Select Members may, but are not required to, nominate representatives to the Committee and Group. LCH SA proposes these changes to make Select Members' obligations with respect to nominating these representatives consistent with the ability to opt out of Competitive Bidding.⁶⁷

C. Submission of Market Data

Unlike Competitive Bidding, under LCH SA's Rule Book, participation in the end of day price contribution process is currently optional for Select Members. As described in Section D below, the Proposed Rule Change would require some Select Members to submit Market Data, while continuing to give other Select Members the option to submit Market Data. LCH SA also proposes two changes to Select Members' price submissions, if they choose to do so. First, the Proposed Rule Change would note that Select Members elect to receive Price Requirement Files⁶⁸ for relevant Trading Cities.⁶⁹ Second, LCH SA proposes a change so that, with respect to the Price Requirement Files received for relevant Trading Cities only, Select Members that elect to be Price Contribution Participants are bound by all obligations of a Price Contribution Participant as set out in the Rule Book and Section 5 of the Procedures, including the obligation to submit Market Data.

As noted, Select Members already may opt to submit Market Data. As such, they have the choice to become Price Contribution Participants. However, under current Article 2.2.0.5, even when a Select Member elects to be a Price Contribution Participant it may choose not to submit Market Data. This differs from General Members, who must act as

⁶⁷ Notice, 89 FR at 21581.

⁶⁸ Price Requirement Files are files listing the Open Positions in respect of which Price Contribution Participants are required to submit Market Data. LCH SA CDS Clearing Procedures, Section 5.18.3.

⁶⁹ A Trading City is the city in which a CDS or Index Swap is typically traded, as published on the website. LCH SA CDS Clearing Rule Book Chapter 1 Article 1.1.1.

Price Contribution Participants and submit Market Data. Given that potential Select Members may lack the capacity to submit Market Data, LCH SA's proposed revisions to select membership will still allow certain Select Members to choose whether they would like to submit Market Data.⁷⁰

D. Mandatory Competitive Bidding and Submission of Market Data

As part of the changes to make Competitive Bidding and price contribution optional for Select Members, LCH SA also will require certain Clearing Members to participate in these processes, regardless of whether they are General or Select Members. LCH SA proposes these changes to guarantee that it has enough participants for those processes.⁷¹

As noted above, Select Members currently must participate in Competitive Bidding for Auction Packages containing Cleared Transactions that belong to any Product Family as set out in that Select Member's Product Family Form. Select Members also currently may choose whether to submit Market Data. The Proposed Rule Change would add text to proposed Article 2.2.0.4, requiring that Select Members submit Market Data for all the Trading Cities and participate in Competitive Bidding when the Group Total Margin Percentage calculated for its Financial Group exceeds the Participation Threshold for sixty consecutive Clearing Days. Additionally, LCH SA's proposal provides that this obligation ends when the Group Total Margin Percentage remains one percentage point below the Participation Threshold for sixty consecutive Clearing Days. LCH SA's proposed changes further indicate that if LCH SA reasonably believes that a Select Member will be required to participate in Competitive Bidding and the price contribution process under proposed Article 2.2.0.4, LCH SA may request for that Select Member to carry out such tests as LCH SA may reasonably require to assess its ability to participate in Competitive Bidding.

To implement this change, LCH SA proposes several new defined terms for its Rule Book. The Participation Threshold for determining when a Select Member must participate in Competitive Bidding and the price contribution process would be defined as the percentage as determined by LCH SA, which is equal to the lower of five percent (5%) and the sixth largest Group Total Margin Percentage among all the

⁷⁰ *Id.* at 21579.

⁷¹ Amended Notice, 89 FR at 84975.

Group Total Margin Percentages calculated in respect of each Financial Group to which one or more Clearing Members belong. LCH SA's proposal would define Group Total Margin Percentage as, in respect of a Financial Group to which one or more Clearing Members belong and in respect of any Clearing Day, the ratio of its Average Group Total Margin divided by the Average CDS Clear Total Margin. LCH SA proposes to define Average CDS Clear Total Margin as the average over the last sixty Clearing Days of the sum of all the Margins (excluding Variation Margins) calculated by LCH SA in respect of the Account Structures of all the Clearing Members. The Proposed Rule Change would define Average Group Total Margin as the average over the last sixty Clearing Days of the sum of all the Margins (excluding Variation Margins) calculated by LCH SA in respect of all the Account Structure(s) of the Clearing Members belonging to the same Financial Group.

Finally, the Proposed Rule Change would make a few edits to account for the possibility that Select Members will need to participate in the price contribution process.⁷² In proposed Article 2.2.0.4, LCH SA would delete language suggesting that a Select Member would never have any obligation to submit Market Data. LCH SA also proposes language for the definition of Price Contribution Participant, which would broaden the definition's application to include Select Members that are required to submit Market Data in addition to Select Members that have opted to submit Market Data.

In practice, this will mean that any Clearing Member that is part of the top six Financial Groups at LCH SA will be required to participate in Competitive Bidding and provide prices, even if that Clearing Member is a Select Member.

E. Select Member Form

Finally, the Proposed Rule Change would create a new Select Member Form, through which Select Members would make the elections described above. Specifically, Select Members would use this form to elect to participate in Competitive Bidding, submit Market Data, and nominate representatives to the Default Management Committee and Default Management Group. The Proposed Rule Change would carry out this change by creating a new definition for Select Member Form, editing certain aspects of its rules to note the use of the Select Member Form, deleting references to the

obsolete Product Family Form, and establishing a process for Select Members to obtain and update the form.

First, to provide a definition for this form, LCH SA proposes a new defined term.⁷³ LCH SA's proposal would define Select Member Form as the form referencing the elections made by a Select Member, in accordance with Article 2.2.0.4, as amended from time to time in accordance with Section 5 of the Procedures.

Second, LCH SA proposes changes that would provide that Select Members choose certain parameters of their membership through the Select Member Form. Currently, Select Member Price Contribution Participants may choose to receive Price Requirement Files in accordance with the conditions set out in Section 1 of the Procedures. The Proposed Rule Change would edit current Article 2.2.0.5 so that it indicates that a Select Member shall notify LCH SA of its elections with respect to Competitive Bidding, submission of Market Data, and nomination of representatives to the Default Management Committee and Default Management Group by providing a duly completed and signed Select Member Form in the conditions and manner set out in Section 1 of the Procedures. Similarly, LCH SA proposes to add text to current Article 2.2.0.5 to explain that a Select Member may change these elections by providing LCH SA with a copy of a duly signed updated Select Member Form, in accordance with the conditions set out in Section 5 of the Procedures. With the process for opting to submit Market Data being described in current Article 2.2.0.5 (proposed Article 2.2.0.4), LCH SA proposes clarifying the definition of Price Contribution Participant to include Select Members that have opted, or are required, to submit Market Data in accordance with Article 2.2.0.4, rather than Section 5 of the Procedures.

Additionally, because there is no longer a need to use the Product Family Form, the Proposed Rule Change would replace references to this form and other references no longer needed with references to the new Select Member Form. The Proposed Rule Change would delete the term Product Family Form from Section 1.1 of the Procedures and replace it with the newly created term, Select Member Form.⁷⁴ As such, an Applicant that wishes to be admitted as a Select Member shall provide LCH SA with the Select Member Form completed by the Select Member as opposed to the Product Family Form.

Likewise, LCH SA proposes to edit Section 5.11(c) of the Procedures to focus on updating the Select Member Form rather than the Product Family Form. The proposal would delete references to the Product Family Form, replacing those references with the term Select Member Form where relevant, and delete references to provisions that focus on the Product Family Form. Further, instead of noting that a Select Member is entitled to add or remove any Product Family indicated in its Product Family Form via email in accordance with Article 2.2.0.4 (2.2.0.5 of the currently effective Rule Book), LCH SA proposes that the provision specify that a Select Member is entitled to change any of its election(s) by email. The Proposed Rule Change also replaces the term Product Family Form with Select Member Form in the Rule Book definition of CDS Clearing Documentation.

Certain other proposed changes delete text that is no longer relevant due to the introduction of the Select Member Form. Specifically, because LCH SA proposes using the Select Member Form for making elections, it would delete a paragraph from Section 5.18.1 of the Procedures that describes the current process for choosing to receive or to stop receiving Price Requirement Files.⁷⁵

Finally, LCH SA proposes to add additional text related to obtaining and updating the Select Member Form. First, LCH SA proposes to add language to Section 1.1 of the Procedures, clarifying that the Select Member Form is made available by LCH SA's CDS Clear Business Development and Relationship Management team. LCH SA also proposes to add language to Section 5.11(c) of the Procedures to note that updates to the Select Member Form may require the Select Member to provide LCH SA with additional information, or take and pass tests that LCH SA may require. The Proposed Rule Change would add text to Section 5.11(c) of the Procedures to clarify that, in situations where a Select Member elects to stop taking part in Competitive Bidding, the election is not effective until the eighth Clearing Day following the Clearing Day on which the updated Select Member Form is received. This would ensure that a Select Member will be required to participate in Competitive Bidding if there is an Event of Default with respect to a separate Clearing Member at the same time LCH SA receives the new Select Member Form.⁷⁶ To clarify this point, LCH SA proposes to add a final

⁷² *Id.* at 84976.

⁷³ *Id.* at 21580.

⁷⁴ *Id.* at 21580.

⁷⁵ *Id.* at 21581.

⁷⁶ *Id.*

paragraph to Section 5.11(c) to indicate that, until the Select Member Form update is effective, the Select Member will continue to be subject to the provisions of the CDS Clearing Documentation applying to any Non-Defaulting Clearing Member required to participate in Competitive Bidding for each Auction Package.

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.⁷⁷ 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 thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."⁷⁸

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,⁷⁹ 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.⁸⁰ 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.⁸¹

After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act⁸² and Rules 17Ad-22(e)(13)⁸³ and (e)(18)⁸⁴ thereunder, as described in detail below.

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

Under Section 17A(b)(3)(F) of the Act, LCH SA's rules, among other things,

must be "designed to promote the prompt and accurate clearance and settlement of securities transactions . . . derivative agreements, contracts, and transactions . . ." ⁸⁵ Based on the Commission's review of the record, and for the reasons discussed below, LCH SA's changes are consistent with Section 17A(b)(3)(F) of the Act because they may help to expand LCH SA's provision of clearing services, contribute to the smooth operation of LCH SA's default auctions, help LCH SA better contain losses, and clarify the process Select Members use to make elections.

The Proposed Rule Change would potentially improve access to clearing for clients. Currently, Select Members may only provide clearing services to Affiliated Firms. The Proposed Rule Change would allow Select Members to provide clearing services to non-affiliated firms as well. Assuming Select Members begin offering clearing services to clients that are not Affiliated Firms, this change could expand the clearing services available to firms that seek to clear transactions as clients. Additionally, as noted above, certain potential Clearing Members are not positioned to provide Market Data or bids on products in default auctions, as currently required under LCH SA's Rule Book for General Members. These requirements could potentially act as barriers to these potential Clearing Members becoming Clearing Members. As such, LCH SA's proposed changes allowing Select Members to choose not to submit Market Data or participate in Competitive Bidding if their Financial Group's Group Total Margin Percentage remains below the Participation Threshold potentially may allow firms to join LCH SA as Select Members or current Select Members to provide clearing services for clients. This may also work to expand clearing services available to clients, which in turn potentially allows LCH SA to clear more trades. Importantly, the Proposed Rule Change does not alter LCH SA's fee grid, Risk Management Framework,⁸⁶ or any other membership standards for Select Members.⁸⁷ By foregoing changes to its

tariffs (specifically the unlimited tariff and variable tariff) and liquidity margining, and thereby maintaining the current structure whereby a General Member may clear for its own account and its clients at less cost than a Select Member, LCH SA provides incentive for its twenty-two CDSClear General Members⁸⁸ to remain General Members even though, under the proposed change, Select Members can clear for non-affiliated firms too. Further, under the Proposed Rule Change, a General Member would likely still have to participate in Competitive Bidding and submit Market Data due to its Group Total Margin Percentage.⁸⁹ As such, these changes would promote the prompt and accurate clearance and settlement of securities transactions.

LCH SA also proposes changes that would contribute to the smooth operation of LCH SA's default auctions. As noted above, if there is an Event of Default, LCH SA shall auction off the defaulting Clearing Member's positions.⁹⁰ Select Members currently must participate in these auctions to the extent the Cleared Transactions in the Auction Packages all belong to the Product Families set out in that Select Member's Product Family Form. However, sometimes Select Members do not actively trade in the Product Families selected on their Product Family Form, or they may not have the operational capacity to take part in default auctions. In LCH SA's experience, Select Members have required assistance managing default files and routinely request assistance addressing questions during fire drill exercises.⁹¹ The proposed changes allow some Select Members to choose whether they would like to participate in Competitive Bidding without regard to the content of Auction Packages and eliminate the concepts of Product Families and the Product Family Form. These proposed changes should allow LCH SA's default auction process to function more efficiently. The efficiency of these auctions potentially impacts LCH SA's ability to limit losses resulting from a Clearing Member default. Because losses from a Clearing Member default could disrupt LCH SA's ability to operate, this aspect of the Proposed

⁸⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁶ Notice, 89 FR at 21580.

⁸⁷ For example, Select Members must still satisfy the membership requirements found in Section 2.2.1 of the LCH SA CDS Clearing Rule Book, the same as General Members. Pursuant to Section 2.2.1, Select Members must, among other things, comply with applicable law relating to their status as a Clearing Member and the performance of their obligations pursuant to the CDS Clearing Documentation, be subject to supervision by Competent Authorities, meet minimum capital requirements, and satisfy a credit risk assessment. See LCH SA CDS Clearing Rule Book, Section 2.2.1.

⁸⁸ In total, CDSClear has twenty-seven members, five of which are Select Members. LCH, Member Search, <https://www.lch.com/membership/member-search>.

⁸⁹ LCH SA provided background and analysis related to the Select Membership model in confidential Exhibit 3.3 to the Proposed Rule Change, which LCH SA added to the Proposed Rule Change with Amendment No. 1.

⁹⁰ LCH SA CDS Clearing Rule Book, Appendix 1, Clause 2.1.

⁹¹ Notice, 89 FR at 21582.

⁷⁷ 15 U.S.C. 78s(b)(2)(C).

⁷⁸ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017) ("Susquehanna").

⁸² 15 U.S.C. 78q-1(b)(3)(F).

⁸³ 17 CFR 240.17Ad-22(e)(13).

⁸⁴ 17 CFR 240.17Ad-22(e)(18).

Rule Change also helps promote LCH SA's operations and therefore the prompt and accurate clearance and settlement of transactions.

At the same time, the Proposed Rule Change would require certain Select Members to participate in Competitive Bidding because of their Financial Group's Group Total Margin Percentage. This makes it more likely that LCH SA will have sufficient participation in its default auctions to successfully offload Auction Packages and ultimately continue operation through a Clearing Member default. By establishing a minimum level of participation, these proposed changes therefore would promote the efficiency of LCH SA's default auctions without necessarily undermining the efficacy of those auctions, thus promoting LCH SA's operations and therefore the prompt and accurate clearance and settlement of transactions.

LCH SA's proposed changes related to price submissions by Select Members also help promote the prompt and accurate clearance and settlement of securities transactions. The Proposed Rule Change would allow some Select Members to choose whether to receive Price Requirement Files for relevant Trading Cities and become bound, in respect of the Price Requirement Files received for relevant Trading Cities only, to submit market data. Under the Proposed Rule Change, other Select Members would have to submit Market Data as a result of their Financial Group's Group Total Margin Percentage. By permitting and requiring Select Members to submit market data under certain circumstances, this aspect of the Proposed Rule Change could enhance the Market Data that LCH SA receives. Enhanced Market Data could, in turn, improve the accuracy of LCH SA's end-of-day prices, which could contribute to the accuracy of LCH SA's outputs, including margin amounts, resulting from these prices. LCH SA uses this Market Data to determine margin amounts and manage the risks associated with clearing and settling securities transactions. These risks, if not properly managed, could cause losses to LCH SA that compromise its ability to operate. As such the proposed changes related to participation in price contribution also promote the prompt and accurate clearance and settlement of transactions.

LCH SA's proposed changes also clarify the process Select Members use to make elections through the Select Member Form. For example, the Proposed Rule Change notes that, under certain circumstances, Select Members may elect to submit Market Data and

participate in Competitive Bidding through the Select Member Form. They can also nominate certain representatives through the Select Member Form. Relatedly, LCH SA's proposal would indicate how a Select Member could change its elections. The Proposed Rule Change would also provide details related to the timing of the effectiveness of updates to the Select Member Form under certain circumstances. By clarifying the process through which Select Members can make elections through the Select Member Form, LCH SA gives effect to its other proposed changes, which as described above, expand LCH SA's provision of clearing services, contribute to the smooth operation of LCH SA's default auctions, and help enhance Market Data that LCH SA receives. As such, the proposed changes related to the introduction of the Select Member Form promote the prompt and accurate clearance and settlement of transactions.

Therefore, the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁹²

B. Consistency With Rule 17Ad-22(e)(13) Under the Act

Rule 17Ad-22(e)(13) requires covered clearing agencies 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.⁹³

As discussed above, the Proposed Rule Change would make participating in Competitive Bidding and default management drills elective for certain Select Members. At the same time, certain Select Members would still be required to participate in Competitive Bidding, specifically if their Financial Group's Group Total Margin Percentage exceeds the specified threshold. As discussed above, in practice, this means that any Clearing Member that is part of the top six Financial Groups at LCH SA will be required to participate in Competitive Bidding and provide Market Data, even if that Clearing Member is a Select Member. This will

help ensure that LCH SA will have sufficient participation in its default auctions to successfully offload Auction Packages and ultimately continue operation through a Clearing Member default. By establishing a minimum level of participation, these proposed changes therefore ensure LCH SA has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.

Additionally, under the Proposed Rule Change, certain Clearing Members and Applicants would still be required to participate in default management drills. Specifically, a Clearing Member Applicant seeking Select Membership and seeking to elect to participate in Competitive Bidding would be required to participate in (and satisfy LCH SA's requirements with respect to the carrying out of) regular fire drills run by LCH SA from time to time in accordance with the Rule Book, or demonstrate that it has an associated entity or an LCH Approved Outsourcing Agent that can successfully do so. Similarly, Select Members that LCH SA reasonably believes will breach the Participation Threshold for sixty consecutive Clearing Days will also need to participate in testing to assess their capacity and ability to participate in Competitive Bidding. Ultimately, this will provide LCH SA with the information it needs to ensure it has the operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations through its default management process.

Proposed changes that improve a clearing agency's ability to conduct a successful auction have been found to be consistent with Rule 17Ad-22(e)(13). For example, a proposed change to except an auction participant from a minimum bid requirement when the auction participant does not have the operational capacity to clear contracts in the relevant auction lot is consistent with the Act, because it improved the clearing agency's auction process by helping to ensure that bids received in an auction are provided by members most able to value and risk manage the defaulter's portfolio.⁹⁴ As discussed above, the Proposed Rule change would allow certain Select Members to choose to participate in Competitive Bidding and would require those Select Members participating in Competitive Bidding to undergo default management drills. This change would allow certain Select Members who do not have the

⁹² 15 U.S.C. 78q-1(b)(3)(F).

⁹³ 17 CFR 240.17Ad-22(e)(13).

⁹⁴ Securities Exchange Act Release No. 98147 (Aug. 16, 2023), 88 FR 57164, 57165-66 (Aug. 22, 2023) (File No. SR-ICC-2023-009) ("Order").

operational capacity to participate in the default auction process to choose not to participate in an auction rather than requiring them to place a bid.⁹⁵ It would also work to identify, manage, and avoid issues LCH SA has encountered with its Select Members in navigating fire drill exercises.⁹⁶ Thus, these aspects of the Proposed Rule Change would work to improve LCH SA's auction process.

Therefore, the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(13) under the Act.⁹⁷

C. Consistency With Rule 17Ad-22(e)(18) Under the Act

Rule 17Ad-22(e)(18) requires covered clearing agencies 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.⁹⁸ As noted above, the Proposed Rule Change would expand access to LCH SA and facilitate fair and open access to LCH SA by indirect participants by allowing Select Members to provide clearing services to non-affiliated firms rather than just to Affiliated Firms. The Proposed Rule Change also would establish objective and publicly-disclosed criteria for participation by Applicants wishing to be Select Members, with respect to participation in competitive bidding, as discussed above.

Therefore, the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(18) under the Act.⁹⁹

IV. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 and Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,¹⁰⁰ to approve the Proposed Rule Change prior to the 30th day after the date of publication of notice of the filing of Amendment No. 1 and Partial Amendment No. 1 in the **Federal Register**. As discussed above, Amendment No. 1 added a requirement that a Select Member participate in Competitive Bidding in default auctions and contribute end-of-day prices should its Financial Group's margins exceed a predetermined threshold over a

designated time, and Partial Amendment No. 1 fixes certain errors in Amendment No. 1. These amendments do not otherwise change the purpose of or statutory basis for the Proposed Rule Change.

For the reasons discussed above, the Commission finds that Proposed Rule Change, as modified by Amendment No. 1 and Partial Amendment No. 1, is consistent with the requirement that LCH SA's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions under Section 17A(b)(3)(F) of the Exchange Act.¹⁰¹ Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,¹⁰² to approve the Proposed Rule Change, as modified by Amendment No. 1 and Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.¹⁰³

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change, as modified by Amendment No. 1 and Partial Amendment No. 1, is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act¹⁰⁴ and Rules 17Ad-22(e)(13)¹⁰⁵ and (e)(18) thereunder.¹⁰⁶

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the Proposed Rule Change, as modified by Amendment No. 1 and Partial Amendment No. 1 (SR-LCH SA-2024-002), be, and hereby is, approved on an accelerated basis.¹⁰⁷

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-27476 Filed 11-22-24; 8:45 am]

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¹⁰¹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰² 15 U.S.C. 78s(b)(2).

¹⁰³ 15 U.S.C. 78s(b)(2).

¹⁰⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰⁵ 17 CFR 240.17Ad-22(e)(13).

¹⁰⁶ 17 CFR 240.17Ad-22(e)(18).

¹⁰⁷ 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).

¹⁰⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101655; File No. SR-CboeBZX-2024-112]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Expand BZX Rule 14.11(I) To Permit the Generic Listing and Trading of Multi-Class ETF Shares

November 19, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 8, 2024, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") 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. 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 BZX Exchange, Inc. ("BZX" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to amend Rule 14.11(I) to provide that the Exchange may approve a series of Exchange-Traded Fund ("ETF") Shares for listing and/or trading on the Exchange that operates in reliance on exemptive relief to Rule 6c-11 under the Investment Company Act of 1940 (the "Investment Company Act") that permits the trust issuing the ETF Shares to offer an exchange-traded fund class in addition to classes of shares that are not exchange-traded.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹⁵ Notice, 89 FR at 21579.

⁹⁶ *Id.* at 21582.

⁹⁷ 17 CFR 240.17Ad-22(e)(13).

⁹⁸ 17 CFR 240.17Ad-22(e)(18).

⁹⁹ 17 CFR 240.17Ad-22(e)(18).

¹⁰⁰ 15 U.S.C. 78s(b)(2).