

Via electronic submission

November 18, 2019

Mr. Christopher Kirkpatrick
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organizations; RIN Number 3038-AE87

Dear Mr. Kirkpatrick:

LCH Ltd and LCH SA (together “LCH”) welcome the opportunity to respond to this request for comment from the Commodity Futures Trading Commission (“CFTC” or “Commission”) regarding the Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organizations (“DCOs”) proposed rulemaking (“Proposal”).¹ We commend the CFTC’s initiative to promote deference and cross-border market access by permitting non-U.S. DCOs that do not pose a “substantial risk to the U.S. financial system” to register with the CFTC but comply with CFTC regulations through compliance with their home country regulatory regimes.

LCH is an international, multi-asset class group of clearing houses, or central counterparties (“CCPs”), that manage risk of many diverse portfolios of cleared derivatives.² LCH has supported regulatory enhancements to the global structure governing derivatives markets that have resulted in a comprehensive, stronger, and more robust risk management framework for CCPs, clearing members, and end-users of derivatives.

LCH is majority owned by the London Stock Exchange Group (“LSEG”), a diversified international financial market infrastructure business. LSEG’s post-trade division also includes the Italian securities settlement system, Monte Titoli, and clearing house, Cassa di Compensazione e Garanzia (“CC&G”). Our combined LSEG post-trade offering covers a wide range of products, asset classes, and clearing services on an open access basis in partnership with our customers and stakeholders.

¹ CFTC, “Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organizations,” 84 FR 34819, available at <https://www.cftc.gov/sites/default/files/2019/07/2019-15262a.pdf>.

² LCH Group is a leading multi-asset class and multi-national group of clearing houses, serving major international exchanges and platforms as well as a range of OTC markets. LCH Group clears a broad range of asset classes including securities, exchange-traded derivatives, foreign exchange derivatives, interest rate swaps, credit default swaps, and euro and sterling denominated bonds and repos. LCH Ltd’s home regulator is the Bank of England (“BoE”). LCH SA’s home regulators are the Autorité des marchés financiers (“AMF”) and Autorité de Contrôle Prudentiel et de Résolution (“ACPR”).

LCH Ltd, our London-based CCP, has been a registered DCO since 2001, supervised by the CFTC under the Commodity Exchange Act (“CEA”) and Commission Regulations. LCH SA, our Paris-based CCP, has been a CFTC registered DCO since 2013.³

Many cleared swaps markets are global in nature. A cooperative international regulatory approach to the evolving international architecture governing the cleared swaps markets supports market liquidity and avoids fragmentation into smaller, localized markets.⁴ Creating a harmonized, level playing field of regulation and cross-border market access enhances competition among global markets and increases financial stability. This results in lower costs and increased protection for markets participants, including end-users.

Large, global CCPs manage different levels of risk in the jurisdictions where they operate. We do not believe there should be a one-size-fits-all approach to cross-border market access. Host country regulators should afford deference to comparable home country oversight where appropriate.

LCH supports the proportionate approach taken in this Proposal, along with related proposals in other jurisdictions, which represent further progress towards a more coherent cross-border regulatory framework for cleared swaps.⁵ We commend the CFTC’s efforts to enhance regulatory deference and cooperation and believe the Proposal will continue to drive progress towards a more harmonized regulatory approach that supports the global nature of the cleared swaps markets.

We elaborate on the following key points below in response to the Proposal:

1. **Defining substantial risk** – Initial margin is one key indicator for measuring the amount of risk a CCP manages in a jurisdiction. The overall assessment and categorization of CCPs must be transparent and flexible and regulators should work to harmonize their approaches across jurisdictions to the greatest extent possible.
2. **Enhance efficiencies around alternative compliance applications** – Shortening the application process for Alternative Compliance DCOs is appropriate. However, we recommend the CFTC rely, as much as possible, on previously submitted information for existing DCOs applying for Alternative Compliance.

³ LCH SA has also been registered with the U.S. Securities and Exchange Commission (“SEC”) as a Clearing Agency since 2017.

⁴ See Written Testimony of Daniel Maguire, CEO, LCH Group, June 26, 2019, U.S. House Committee on Agriculture, Subcommittee on Commodity Exchanges, Energy, and Credit, available at <https://agriculture.house.gov/uploadedfiles/hrg-116-ag22-wstate-maguired-20190626.pdf>.

⁵ See LSEG comment letters in response to ESMA Technical Advice on criteria for tiering under Article 25(2a) of EMIR 2.2, July 2019, available at https://www.lseg.com/sites/default/files/content/documents/Regulatory/2019/July/20190717%20LSEG_response_on_ESMA_Tiering_CP_2019%20Final.pdf; see also LSEG comment letters in response to on ESMA Technical Advice on comparable compliance under Article 25a of EMIR, July 2019, available at https://www.lseg.com/sites/default/files/content/documents/Regulatory/2019/July/20190729%20LSEG_on_ESMA_Comparable_Compliance_CP.pdf.

3. **An outcomes-based approach is appropriate** – The DCO Core Principles are an appropriate foundation for an outcomes-based assessment of whether a foreign regulatory regime is comparable to the CFTC’s regulations.

LCH provides the following specific comments to the CFTC’s Request for Comment:

1. *Does the proposed alternative compliance regime, including both the application process and the ongoing requirements, strike the right balance between the Commission’s regulatory interests and the regulatory interests of non-U.S. DCOs’ home country regulators?*

The Proposal adequately balances the CFTC’s regulatory interests and the regulatory interests of non-U.S. DCO’s home country regulators. LCH believes this Proposal appropriately accounts for both the CFTC’s risk-related concerns and international comity.⁶

...

3. *Should the Commission take into account regulations in Part 39, in addition to the DCO Core Principles, in determining whether alternative compliance is appropriate for a non-U.S. clearing organization?*

The Proposal’s use of the DCO Core Principles to determine whether a non-U.S. DCO’s home regulators’ requirements are comparable to CFTC requirements is appropriate. The DCO Core Principles are consistent with the CPMI-IOSCO Principles for Financial Market Infrastructures (“PFMIs”), which have been agreed by the international regulatory community as essential to strengthening and preserving financial stability.

4. *Should the Commission require additional, or less, information from an applicant for alternative compliance as part of its application under proposed § 39.3(a)(3)?*

LCH supports the Alternative Compliance application process under proposed § 39.3(a)(3) for existing exempt DCOs or new applicants. However, we recommend the CFTC rely, to the greatest extent possible, on previously submitted documents for existing DCOs applying for Alternative Compliance.

5. *Is the proposed test for “substantial risk to the U.S. financial system” the best measure of such risk? If not, please explain why, and if there is a better measure/metric that the Commission should use, please provide a rationale and supporting data, if available.*

LCH agrees with the Proposal’s use of initial margin as an initial indicator of a non-U.S. DCO’s “substantial risk to the U.S. financial system.” We believe that initial margin provides a sound measure for analyzing risk. For example, using gross notional to assess cleared swaps volumes does not provide a clear indication of risk and could lead to an over-estimation of the underlying risk managed by the DCO.

We support the CFTC’s ability to exercise its discretion when determining whether a non-U.S. DCO poses a “substantial risk to the U.S. financial system” in circumstances when that DCO is close to 20 percent on both prongs of the proposed test.⁷ LCH recommends there be greater

⁶ See 84 FR 34819 at 34822.

⁷ *Id.*

transparency around the qualitative factors that may be considered in a non-U.S. DCO's substantial risk assessment. Any such factors should be measurable and relevant to addressing risk in the U.S. financial system.

The Proposal appropriately recognizes LCH Ltd's substantial risk management role in the U.S. financial markets.⁸ We believe this direct registration model has provided our clearing house, clearing members, and customers with legal certainty and confidence under the CFTC's customer protection regime and U.S. bankruptcy law. However, we recognize that other models may be more proportionate for CCPs that do not manage the same level of risk in a foreign jurisdiction, including in the U.S.

6. *What is the frequency with which the Commission should reassess a DCO's "risk to the U.S. financial system" for purposes of the test, and across what time period, after it is registered under the alternative compliance regime?*

LCH suggests the CFTC reassess a non-U.S. DCO's "risk to the U.S. financial system" on at least a yearly basis. Further, if the CFTC determines the non-U.S. DCO poses a "substantial risk to the U.S. financial system" after that DCO is approved for Alternative Compliance, LCH recommends there be clear indications on the time frame by which that DCO needs to become fully compliant with CFTC regulations.

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LCH appreciates the opportunity to comment on this Proposal and looks forward to contributing further on this important initiative.

Sincerely,



Jonathan Jachym
Head of Government Relations and Regulatory Strategy, Americas
London Stock Exchange Group

⁸ *Id.* at 34820, fn 10.