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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85828; File No. 10-234)

In the Matter of the Application of
Long Term Stock Exchange, Inc.
for Registration as a National Securities Exchange

Findings, Opinion, and Order of the Commission

May 10, 2019

I. Introduction and Procedural History

On November 9, 2018, Long-Term Stock Exchange, Inc. (“LTSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a Form 1 application under the Securities Exchange Act of 1934 (“Act”), seeking registration as a national securities exchange under Section 6 of the Act.¹ In a letter dated December 4, 2018, LTSE consented to an extension of time for up to an additional 90 days from the date of publication of notice of LTSE’s Form 1 application.² Notice of the application was published for comment in the Federal Register on December 6, 2018.³ The Commission has received one comment letter on the application.⁴ On February 26, 2019, LTSE submitted Amendment No. 1 to the application.⁵ On April 3, 2019,

¹ 15 U.S.C. 78f.

² See Letter to Brett Redfearn, Director, Division of Trading and Markets, Commission, from Eric Ries, dated December 4, 2018.

³ See Securities Exchange Act Release No. 84709 (November 30, 2018), 83 FR 62941 (“Notice”).

⁴ See Letter to Brent J. Fields, Secretary, Commission, from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated January 22, 2019, available at: <https://www.sec.gov/comments/10-234/10234-4844313-177202.pdf> (“CII Letter”).

⁵ See Letter to Brett Redfearn, Director, Division of Trading and Markets, Commission, from Annette L. Nazareth, dated February 26, 2019. In Amendment No. 1, LTSE submitted updated portions of its Form 1, including revised Exhibits A, B, C, D, E, I, J and K.

LTSE submitted Amendment No. 2 to the application.⁶

The Commission has reviewed the Exchange's registration application, as amended, together with the comment letter received, in order to make a determination whether to grant such registration. For the reasons set forth below, and based on the representations set forth in LTSE's Form 1, as amended, this order approves LTSE's Form 1 application, as amended, for registration as a national securities exchange.

II. Statutory Standards

Pursuant to Sections 6(b) and 19(a) of the Act,⁷ the Commission shall by order grant an application for registration as a national securities exchange if the Commission finds, among other things, that the proposed exchange is so organized and has the capacity to carry out the purposes of the Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that LTSE's application, as amended, for exchange registration meets the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of LTSE are consistent with Section 6 of the Act in that, among other things, they are designed to: (1) assure fair representation of the exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative

⁶ See Letter to Brett Redfearn, Director, Division of Trading and Markets, Commission, from Annette L. Nazareth, dated April 3, 2019. In Amendment No. 2, LTSE updated portions of its Form 1, including revised Exhibits A, B, C, D, H, and J.

⁷ 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

of investors and not be associated with the exchange, or with a broker or dealer;⁸ (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system;⁹ (3) not permit unfair discrimination between customers, issuers, or dealers;¹⁰ and (4) protect investors and the public interest.¹¹ The Commission also finds that the rules of LTSE are consistent with Section 11A of the Act.¹² Finally, the Commission finds that LTSE's proposed rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹³

III. Discussion

A. Governance of LTSE

LTSE Group, Inc. ("LTSEG"), a Delaware corporation, will own 100% of the equity of LTSE and is the entity through which the individual investors who are ultimate owners of the Exchange will hold their ownership interests in the Exchange.¹⁴ LTSEG will be the primary employer of all LTSE personnel. In addition, the stockholders who directly own LTSEG also

⁸ See U.S.C. 78f(b)(3).

⁹ See U.S.C. 78f(b)(5).

¹⁰ See id.

¹¹ See id.

¹² 15 U.S.C. 78k-1.

¹³ 15 U.S.C. 78f(b)(8).

¹⁴ See Form 1, Exhibit C. The citations to the Exchange's Form 1 and its Exhibits hereinafter in this Order refer to the Form 1 application and its Exhibits, as amended.

will directly own a separate, affiliated Delaware-incorporated entity, LTSE Services, Inc. (“LTSE Services”), a software business currently serving approximately 20,000 users, mostly early stage companies.¹⁵ It is contemplated that the Exchange will maintain a commercial relationship with LTSE Services, seeking to leverage the company’s technological expertise to support the Exchange’s software needs.

1. LTSE Board of Directors

The board of directors of LTSE (“Exchange Board”)¹⁶ will be its governing body and will possess all of the powers necessary for the management of its business and affairs, including governance of LTSE as a self-regulatory organization (“SRO”).¹⁷ Pursuant to the LTSE Bylaws:

- the Exchange Board initially will be composed of 6 or more directors;¹⁸
- one director will be the Chief Executive Officer of LTSE;¹⁹
- the number of Non-Industry Directors,²⁰ including at least one Independent Director,²¹ will equal or exceed the sum of the Industry Directors²² and Member Representative Directors;²³ and

¹⁵ As described by the Exchange, LTSE Services provides tools to companies and investors designed to help founders and their employees through all stages of a company’s life cycle and currently focuses on creating user-friendly software products for its clients that drive financial and other solutions that can be specialized or scaled for broad commercial application, and continues to develop new products that provide value to companies in different stages of their life cycles. Id.

¹⁶ A Director may not be subject to statutory disqualification. See First Amended and Restated Bylaws of Long-Term Stock Exchange, Inc. (“LTSE Bylaws”), Article III, Section 3.2(d).

¹⁷ See LTSE Bylaws, Article III, Section 3.1. See also Form 1, Exhibit J.

¹⁸ See LTSE Bylaws, Article III, Section 3.2(a). See also Form 1, Exhibit A.

¹⁹ See LTSE Bylaws, Article III, Section 3.2(b).

- at least 20% of the directors on the Exchange Board will be Member

Representative Directors.

The initial Directors of the Exchange Board will be appointed by LTSEG and will serve until the first annual meeting of stockholders.²⁴ The first annual meeting of stockholders will be held prior to LTSE's commencement of operations as an Exchange.²⁵

In addition, LTSEG will appoint the initial Nominating Committee and Member Nominating Committee, consistent with each committee's compositional requirements, to nominate candidates for election to the Exchange Board.²⁶ The Nominating Committee and

²⁰ "Non-Industry Director" means a Director who is an Independent Director or any other individual who would not be an Industry Director. See LTSE Bylaws, Article I, Section (v).

²¹ "Independent Director" means a Director who has no material relationship with the Exchange or any affiliate of the Exchange or any Exchange Member or any affiliate of any Exchange Member; provided, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of LTSE or LTSEG. See LTSE Bylaws, Article I, Section (m).

²² "Industry Director" means, among other criteria, a Director who is or has been within the prior three years an officer, director or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer. See LTSE Bylaws, Article I, Section (o), for a description of all of the circumstances regarding when a Director would be considered an Industry Director.

²³ "Member Representative Director" means a Director who has been appointed as such to the initial Exchange Board pursuant to Article III, Section 3.4(g) of the Bylaws or elected by stockholders after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the Bylaws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member. See LTSE Bylaws, Article I, Section (s).

²⁴ See LTSE Bylaws, Article III, Section 3.4(g).

²⁵ See LTSE Bylaws, Article IV, Section 4.1(b).

²⁶ See LTSE Bylaws, Article VI, Section 6.1.

Member Nominating Committee, after completion of their respective duties for nominating directors for election to the Board for that year, will recommend candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable.²⁷ LTSE members will have rights to nominate and elect additional candidates for the Member Nominating Committee pursuant to a petition process.²⁸

The Nominating Committee will nominate candidates for election to the Board at the annual stockholder meeting and all other vacant or new Director positions on the Board.²⁹ For Member Representative Director positions, the Member Nominating Committee, composed solely of Member Representative Members, will solicit input from LTSE members and members may submit petition candidates.³⁰ If no candidates are nominated pursuant to a petition process, then the initial nominees approved and submitted by the Member Nominating Committee will be nominated as Member Representative Directors by the Nominating Committee.³¹ If a petition process produces additional candidates, then the candidates nominated pursuant to the petition process, together with those nominated by the Member Nominating Committee, will be presented to LTSE members for election to determine the final designees for any open Member Representative Director positions.³² In the event of a contested election, the candidates who

²⁷ Id.

²⁸ See LTSE Bylaws, Article III, Section 3.4

²⁹ See LTSE Bylaws, Article VI, Section 6.2.

³⁰ See LTSE Bylaws, Article III, Section 3.4.

³¹ See LTSE Bylaws, Article III, Section 3.4(e).

³² Id.

receive the most votes will be selected as the Member Representative Director designees by the Member Nominating Committee.³³

The Commission believes that the LTSE governance provisions are consistent with the Act. In particular, the Commission believes that the requirement in the LTSE Bylaws that the number of Member Representative Directors must be at least 20% of the Board and the means by which they will be chosen by LTSE members provide for the fair representation of members in the selection of directors and the administration of LTSE and therefore are consistent with Section 6(b)(3) of the Act.³⁴ As the Commission has previously noted, this requirement helps to ensure that members have a voice in an exchange's self-regulatory program, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.³⁵

In addition, with respect to the requirement that the number of Non-Industry Directors, including at least one Independent Director, will equal or exceed the sum of the number of Industry Directors and Member Representative Directors, the Commission believes that the proposed composition of the Exchange Board satisfies the requirements in Section 6(b)(3) of the

³³ See LTSE Bylaws, Article III, Section 3.4(f).

³⁴ 15 U.S.C. 78f(b)(3).

³⁵ See, e.g., Securities Exchange Act Release Nos. 79543 (December 13, 2016), 81 FR 92901, 92903 (December 20, 2016) (File No. 10-227) (order granting registration of MIAX PEARL, LLC) ("MIAX PEARL Order"); 68341 (December 3, 2012), 77 FR 73065, 73067 (December 7, 2012) (File No. 10-207) (order granting the registration of Miami International Securities Exchange, LLC ("MIAX Exchange")) ("MIAX Order"); 58375 (August 18, 2008), 73 FR 49498, 49501 (August 21, 2008) (File No. 10-182) (order granting the registration of BATS Exchange, Inc.) ("BATS Order"); and 53128 (January 13, 2006), 71 FR 3550, 3553 (January 23, 2006) (File No. 10-131) (granting the exchange registration of Nasdaq Stock Market, Inc.) ("Nasdaq Order").

Act,³⁶ which require in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. The Commission previously has stated that the inclusion of public, non-industry representatives on exchange oversight bodies is an important mechanism to support an exchange's ability to protect the public interest.³⁷ Further, the presence of public, non-industry representatives can help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unbiased perspectives, which may enhance the ability of the Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.

2. Interim Board

LTSEG, as the sole stockholder of the Exchange, will appoint Interim Directors of the Board ("Interim Board") at a special meeting of the stockholder, which will include Interim Member Representative Directors.³⁸ Upon appointment of the Interim Directors by the stockholder, the Interim Board will meet the Board composition requirements set forth in the LTSE Bylaws.³⁹ The Interim Board members will serve only until the first annual meeting of the stockholders, which will be held prior to the company's commencement of operations as an Exchange.⁴⁰ The Exchange represents that it will complete the full nomination, petition, and

³⁶ 15 U.S.C. 78f(b)(3).

³⁷ See, e.g., MIAX PEARL Order, supra note 35, at 92903; MIAX Order, supra note 35, at 73067; BATS Order, supra note 35, at 49501; and Nasdaq Order, supra note 35, at 3553.

³⁸ See Form 1, Exhibit J. See also LTSE Bylaws, Article III, Section 3.2 (stating that the Exchange Board shall consist of five (6) or more Directors).

³⁹ See Form 1, Exhibit J.

⁴⁰ Id.

voting process set forth in the LTSE Bylaws, which will provide persons that are approved as LTSE members after the date that the Commission grants the Exchange's registration as a national securities exchange with the opportunity to participate in the selection of Member Representative Directors as promptly as possible after the effective date of the Bylaws.⁴¹

3. Exchange Committees

LTSE has proposed to establish several committees of the Exchange Board. Specifically, LTSE has proposed to establish the following committees of the Exchange Board: an Audit Committee, an Appeals Committee, and a Regulatory Oversight Committee, as well as a Compensation Committee.⁴² In addition, LTSE has proposed to establish a Nominating Committee and a Member Nominating Committee, as discussed above.

The Appeals Committee will consist of two Independent Directors, and one Member Representative Director.⁴³ Each member of the Regulatory Oversight Committee must be an Independent Director.⁴⁴ Each voting member of the Compensation Committee must be an Independent Director.⁴⁵ Each member of the Audit Committee must be an Independent Director.⁴⁶

Because the Executive Committee will have the powers and authority of the Exchange Board in the management of the business and affairs of the Exchange between meetings of the

⁴¹ Id.

⁴² See LTSE Bylaws, Article V, Sections 5.1 and 5.6(a). If no Compensation Committee is elected, reference to the Compensation Committee shall refer to the entire Board. See LTSE Bylaws, Article V, Section 5.6(a).

⁴³ See LTSE Bylaws, Article V, Section 5.6(d).

⁴⁴ See LTSE Bylaws, Article V, Section 5.6(c).

⁴⁵ See LTSE Bylaws, Article V, Section 5.6(a).

⁴⁶ See LTSE Bylaws, Article V, Section 5.6(b). See also LTSE Bylaws, Article III, Section 3.18(a) regarding the potential role of the Audit Committee in conflict of interest matters.

Exchange Board, its composition must reflect that of the Exchange Board. Accordingly, the number of Non-Industry Directors on the Executive Committee must equal or exceed the number of Industry Directors and the percentages of Independent Directors and Member Representative Directors on the Executive Committee must be at least as great as the corresponding percentages of each such class of Directors on the Exchange Board as a whole.⁴⁷

The Commission believes that LTSE's proposed committees, which are similar to the committees maintained by other exchanges,⁴⁸ are designed to help enable the Exchange to carry out its responsibilities under the Act and are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁴⁹

B. LTSE Group and Regulation of the Exchange

When LTSE commences operations as a national securities exchange, it will have all of the attendant regulatory obligations under the Act. In particular, LTSE will be responsible for the operation and regulation of its trading system and the regulation of its members. The Commission believes that certain provisions in the LTSE and LTSEG governing documents are designed to facilitate the ability of LTSE to fulfill its regulatory obligations and to help facilitate Commission oversight of LTSE. The discussion below summarizes some of these key provisions.

1. Ownership Structure; Ownership and Voting Limitations

⁴⁷ See LTSE Bylaws, Article V, Section 5.6(e).

⁴⁸ See, e.g., Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222) (order granting the registration of Investors' Exchange, LLC) ("IEX Order"); Nasdaq Order, supra note 35; and BATS Order, supra note 35.

⁴⁹ 15 U.S.C. 78f(b)(1).

As stated above, LTSE will be wholly owned by LTSEG. The proposed Amended and Restated Certificate of Incorporation of LTSEG (“LTSEG Certificate”) includes restrictions on the ability to own and vote shares of capital stock of LTSEG.⁵⁰ These limitations are designed to prevent any LTSEG shareholder from exercising undue control over the operation of the Exchange and to ensure that the Exchange and the Commission are able to carry out their regulatory obligations under the Act.

In particular, for so long as LTSEG shall control, directly or indirectly, a national securities exchange, no Person,⁵¹ either alone or together with its Related Persons,⁵² will be permitted to beneficially own, directly or indirectly, of record or beneficially, shares constituting more than 40% of any class of capital stock of LTSEG.⁵³ A more restrictive condition will apply to members of the Exchange, who will be prohibited from beneficially owning, directly or indirectly, either alone or together with their Related Persons, more than 20% of shares of any class of capital stock of LTSEG.⁵⁴ If any stockholder purports to sell,

⁵⁰ These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. See, e.g., IEX Order, supra note 48, and MIAx PEARL Order, MIAx Order, and BATS Order, supra note 35; see also Securities Exchange Release Nos. 6068 (February 4, 2016) (File No. 10-221) (order granting exchange registration of ISE Mercury, LLC) (“ISE Mercury Order”); 70050 (July 26, 2013), 78 FR 46622, 46624 (August 1, 2013) (File No. 10-209) (order granting the exchange registration of ISE Gemini, LLC) (“ISE Gemini Order”); 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (CBOE-2008-88) (CBOE demutualization order); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR-NSX-2006-03) (NSX demutualization order); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR-CHX-2004-26) (CHX demutualization order); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73) (Phlx demutualization order).

⁵¹ See LTSEG Certificate, Article IX, subparagraph (A)(2)(a)(i)(defining “Person”).

⁵² See id. at subparagraph (A)(2)(a)(ii)(defining “Related Persons”).

⁵³ See id. at subparagraph (A)(2)(b)(i)(A). There are limited exceptions to these prohibitions. See infra notes 58-63 and accompanying text.

⁵⁴ See id. at subparagraph (A)(2)(b)(i)(B).

transfer, assign, pledge, or own any shares of LTSEG in violation of these ownership limits, LTSEG will be required (to the extent funds are legally available) to redeem the shares in excess of the applicable ownership limit at their par value.⁵⁵

In addition, no Person, alone or together with its Related Persons, will be entitled to vote or cause the voting of shares of the capital stock of LTSEG, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 20% of the voting power of the then issued and outstanding capital stock of LTSEG (“Voting Limitation”), and LTSEG will disregard any such votes purported to be cast in excess of the Voting Limitation.⁵⁶ Further, if any Person, either alone or together with its Related Persons, is a party to any agreement, plan or other arrangement relating to shares of stock of LTSEG entitled to vote in any matter with any other Person, either alone or together with its Related Persons, under circumstances that would result in the shares of capital stock of LTSEG that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together

⁵⁵ See id. at subparagraph (A)(2)(e). The number of shares to be redeemed is to be calculated after taking into account that the redeemed shares will become treasury shares and will no longer be deemed to be outstanding shares. Id. It is further provided in the LTSEG Certificate that any shares that have been called for redemption may not be deemed outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter. From and after the redemption date (unless LTSEG defaults in providing funds for the payment of the redemption price), the shares of redeemed stock which have been redeemed as per these provisions will become treasury shares and will no longer be deemed to be outstanding, and all rights of the holder of the redeemed stock as a stockholder of LTSEG (except the right to receive from LTSEG the redemption price against delivery to LTSEG of evidence of ownership of the shares) will cease. Id. In addition, in the event that any redemption has resulted in any additional stockholder owning such number of shares that is in violation of the ownership limits, LTSEG will be required to redeem those shares pursuant to the limitation provisions. Id.

⁵⁶ See id. at subparagraph (A)(2)(b)(i)(C).

with its Related Persons, to vote, possess the right to vote, or cause the voting of shares of the capital stock of LTSEG that would represent more than 20% of said voting power⁵⁷ (the “Recalculated Voting Limitation”), then the Person, either alone or together with its Related Persons, will not be entitled to vote or cause the voting of shares of stock of LTSEG, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than the Recalculated Voting Limitation, and LTSEG will disregard any such votes purported to be in excess of the Recalculated Voting Limitation.⁵⁸

The board of directors of LTSEG (“LTSEG Board”) will be permitted to waive the 40% ownership limitation and the 20% voting limitation for non-members of the Exchange, pursuant to a resolution duly adopted by the LTSEG Board, if it makes certain determinations.⁵⁹ Any

⁵⁷ The text of the LTSEG Certificate stipulates that this provision applies “assuming that all shares of [LTSEG] that are subject to the agreement, plan or other arrangement are not treated as having voting power.” Id.

⁵⁸ See LTSEG Certificate, Article IX, subparagraph (A)(2)(b)(i)(C)(2). The provisions of this section of LTSEG Certificate regarding limitations on transfer, ownership and voting will not apply to: (a) any solicitation of any revocable proxy from any stockholder of LTSEG by or on behalf of LTSEG or by any officer or director of LTSEG acting on behalf of LTSEG; or (b) any solicitation of any revocable proxy from any stockholder of LTSEG by another stockholder that is conducted pursuant to, and in accordance with, Regulation 14A under the Act (other than a solicitation pursuant to Rule 14a-2(b)(2)). See id. at subparagraph (A)(2)(b)(i)(D). See also id. at (b)(i)(E).

⁵⁹ See id. at subparagraph (A)(2)(b)(ii)(B). The required determinations are that (a) such waiver will not impair the ability of the Exchange to carry out its functions and responsibilities as an “exchange” under the Act and the rules and regulations promulgated thereunder; that such waiver is otherwise in the best interests of LTSEG, its stockholders, and the Exchange; that such waiver will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder; and that such Person and its Related Persons are not subject to any applicable “statutory disqualification” within the meaning of Section 3(a)(39) of the Act. See id. at subparagraphs (A)(2)(b)(ii) and (iii). These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. See, e.g., IEX Order, ISE Mercury Order, and ISE Gemini Order, supra note 50; MIAX PEARL Order, MIAX

such waiver will not be effective unless and until approved by the Commission.⁶⁰ The LTSEG Board is specifically precluded from waiving the 20% voting and ownership limits described above for members of the Exchange and their Related Persons.⁶¹

Any person that proposes to own shares of capital stock of LTSEG in excess of the 40% ownership limitation, or vote or cause the voting of shares of capital stock of LTSEG in person or by proxy or through any voting agreement or other arrangement in excess of the Voting Limitation or Recalculated Voting Limitation, as applicable, will be required to deliver written notice to the LTSEG Board of its intention.⁶² The notice must be delivered to the LTSEG Board not less than 45 days (or any shorter period to which the Board expressly consents) before the proposed ownership of such shares or the proposal to vote or cause the voting of such shares in person or by proxy through any voting agreement or other arrangement of its intention to do so.⁶³

The LTSEG Certificate also contains provisions that are designed to further safeguard the ownership and voting limitations described above, or are otherwise related to direct and indirect changes in control. Specifically, any Person that, either alone or together with its Related Persons beneficially owns, directly or indirectly (whether by acquisition or a change in the number of shares outstanding), of record or beneficially 5% or more of the then outstanding shares of capital stock of LTSEG (excluding shares of any class of stock that does not have the

Order, and BATS Order, supra note 35; and Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10-194 and 10-196) (order approving DirectEdge exchanges) (“DirectEdge Exchanges Order”).

⁶⁰ See LTSEG Certificate, Article IX, at subparagraph (A)(2)(b)(ii)(B).

⁶¹ See id.

⁶² See id. at subparagraph (A)(2)(b)(iv).

⁶³ See id.

right by its terms to vote generally in the election of members of the LTSEG Board) will be required to immediately notify the LTSEG Board in writing of such ownership.⁶⁴ Thereafter, such Persons will be required to update LTSEG of any increase or decrease of 1% or more in their previously reported ownership percentage.⁶⁵

The Exchange's Amended and Restated Certificate of Incorporation ("LTSE Certificate") does not include change of control provisions that are similar to those in the LTSEG Certificate. However, the LTSE Certificate explicitly provides that LTSEG will be the sole owner of the common stock of the Exchange.⁶⁶ Thus, if LTSEG ever proposes to no longer be the sole owner of the Exchange, the LTSE Certificate will be required to be amended. Any amendment to the LTSE Certificate, including any change in the provisions that identify LTSEG as the sole owner of the Exchange, will constitute a proposed rule change under Section 19(b) of the Act⁶⁷ and Rule 19b-4⁶⁸ thereunder that will be required to be filed with, or filed with and approved by, the Commission.⁶⁹ Moreover, pursuant to the LTSE Certificate itself, any sale, transfer or assignment by LTSEG of common stock of the Exchange will be subject to

⁶⁴ See id. at subparagraph (A)(2)(c)(i). The notice will require the Person's full legal name; the Person's title or status and the date on which such title or status was acquired; the Person's and its Related Person's) approximate ownership interest in LTSEG; and whether the person has power, directly or indirectly, to direct the management or policies of LTSEG, whether through ownership of securities, by contract or otherwise. See id.

⁶⁵ See id. at subparagraph (A)(2)(c)(ii). Changes of less than 1% must also be reported to LTSEG if they result in such Person crossing a 20% or 40% ownership threshold. See id. In addition, the Exchange's rules also impose limits on affiliation between the Exchange and a member of the Exchange. See LTSE Rule 2.210 (No Affiliation between Exchange and any Member).

⁶⁶ See LTSE Certificate, Article IV.

⁶⁷ 15 U.S.C. 78s(b).

⁶⁸ 17 CFR 240.19b-4.

⁶⁹ See LTSE Certificate, Article VI.

prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act.⁷⁰

Although LTSEG is not directly responsible for regulation, its activities with respect to the operation of LTSE must be consistent with, and must not interfere with, the self-regulatory obligations of LTSE.⁷¹ As described above, the provisions applicable to direct and indirect changes in control of LTSEG and LTSE, as well as the voting limitation imposed on owners of LTSEG who also are LTSE members, are designed to help prevent any owner of LTSEG from exercising undue influence or control over the operation of the Exchange and to help ensure that the Exchange retains a sufficient degree of independence to effectively carry out its regulatory obligations under the Act.

In addition, these limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange. As the Commission has noted in the past, a member's ownership interest in an entity that controls an exchange could become so large as to cast doubt on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.⁷² A member that is a controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such

⁷⁰ See LTSE Certificate, Article IV.

⁷¹ See, e.g., IEX Order, supra note 48.

⁷² See, e.g., ISE Mercury Order, supra note 50, and IEX Order, supra note 48; MIAX PEARL Order, MIAX Order, and BATS Order, supra note 35; and DirectEdge Exchanges Order, supra note 59.

provisions. As such, the Commission believes that these requirements are designed to minimize the potential that a person or entity can improperly interfere with or restrict the ability of the Exchange to effectively carry out its regulatory oversight responsibilities under the Act.

The Commission believes that LTSE's and LTSEG's proposed governance provisions are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁷³ In particular, these requirements are designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

2. Regulatory Independence and Oversight

Although LTSEG will not itself carry out regulatory functions, its activities with respect to the operation of LTSE must be consistent with, and must not interfere with, LTSE's self-regulatory obligations. In this regard, LTSE and LTSEG propose to adopt certain provisions in their respective governing documents that are designed to help maintain the independence of the regulatory functions of LTSE. These proposed provisions are substantially similar to those included in the governing documents of other exchanges that recently have been granted registration.⁷⁴ Specifically:

- The directors, officers, employees, and agents of LTSEG must give due regard to the preservation of the independence of the self-regulatory function of LTSE and to its obligations to investors and the general public and must not take actions which

⁷³ 15 U.S.C. 78f(b)(1).

⁷⁴ See, e.g., IEX Order, supra note 48; MIAX Order, supra note 35. See also DirectEdge Exchanges Order, supra note 59.

would interfere with the effectuation of decisions by the Exchange Board relating to its regulatory functions (including disciplinary matters) or which would interfere with LTSE's ability to carry out its responsibilities under the Act.⁷⁵

- LTSEG must comply with the federal securities laws and the rules and regulations promulgated thereunder, and must cooperate with the Commission and LTSE pursuant to, and to the extent of, their respective regulatory authority. In addition, LTSEG's officers, directors, employees, and agents must comply with the federal securities laws and the rules and regulations promulgated thereunder and are deemed to agree to cooperate with the Commission and LTSE in respect of the Commission's oversight responsibilities regarding LTSE and the self-regulatory functions and responsibilities of LTSE, and LTSEG must take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate.⁷⁶

⁷⁵ See proposed Bylaws of LTSE Group, Inc. ("LTSEG Bylaws"), Article X, Section 10.1. Similarly, Article III, Section 3.1(d) of the LTSE Bylaws requires the Exchange Board, when managing the business and affairs of LTSE, to consider the requirements of Section 6(b) of the Act and requires each Director, officer or employee of LTSE to comply with the federal securities laws and regulations thereunder and cooperate with the Commission, and LTSE pursuant to its regulatory authority. Article III, Section 3.1(e) of the LTSE Bylaws also requires the Exchange Board, when evaluating any proposal to take into account all factors that the Board deems relevant, to the extent deemed relevant: the potential impact on the integrity, continuity and stability of the national securities exchange operated by LTSE and the other operations of LTSE, on the ability to prevent fraudulent and manipulative acts and practices, and on investors and the public, and whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

⁷⁶ See LTSEG Bylaws, Article X, Section 10.4. Similarly, Article V(b) of the LTSE Certificate requires LTSE's directors, officers and employees, in discharging their

- LTSEG, and its officers, directors, employees, and agents must submit to the jurisdiction of the U.S. federal courts, the Commission, and LTSE, for purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, LTSE activities.⁷⁷
- All books and records of LTSE reflecting confidential information pertaining to the self-regulatory function of LTSE (including but not limited to disciplinary matters, trading data, trading practices, and audit information) must be retained in confidence by LTSE and its personnel, directors, officers, employees and agents, and will not be used by LTSE for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any LTSE member) other than to personnel of the Commission, and those personnel of LTSE, members of committees of the Exchange Board, members of the Exchange Board, or hearing officers and other agents of LTSE, to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of LTSE.⁷⁸ Similar provisions apply to LTSEG and its directors, officers, employees and agents.⁷⁹

respective responsibilities, to comply with the federal securities laws and the rules and regulations promulgated thereunder and to cooperate with the Commission, and LTSE pursuant to its regulatory authority.

⁷⁷ See LTSEG Bylaws, Article X, Section 10.5.

⁷⁸ See LTSE Bylaws, Article XI, Section 11.4.

⁷⁹ The LTSEG Bylaws also provide that all books and records of LTSE reflecting confidential information pertaining to the self-regulatory function of LTSE that come into the possession of LTSEG, and the information contained in those books and records, will be subject to confidentiality restrictions and will not be used for any non-regulatory purposes. See LTSEG Bylaws, Article X, Section 10.2. The LTSE and LTSEG governing documents acknowledge that requirements to keep such information

- The books and records of LTSE and LTSEG must be maintained in the United States⁸⁰ and, to the extent they are related to the operation or administration of LTSE, LTSEG's books and records will be subject at all times to inspection and copying by the Commission and LTSE.⁸¹
- Furthermore, to the extent they are related to the operation or administration of LTSE, the books, records, premises, officers, directors, employees, and agents of LTSEG will be deemed to be the books, records, premises, officers, directors, employees, and agents of LTSE, for purposes of, and subject to oversight pursuant to, the Act.⁸²
- LTSEG will take reasonable steps necessary to cause its officers, directors, employees, and agents, prior to accepting a position as an officer, director, employee or agent (as applicable) to consent in writing to the applicability of provisions regarding non-interference, confidentiality, books and records, compliance and cooperation, jurisdiction, and regulatory obligations, with respect to their activities related to LTSE.⁸³
- The LTSEG Certificate and Bylaws require that, so long as LTSEG controls LTSE, any changes to those documents must be submitted to the Exchange Board for approval,

confidential shall not limit or impede the rights of the Commission to access and examine such information or limit the ability of officers, directors, employees, or agents of LTSE or LTSEG to disclose such information to the Commission. See LTSE Bylaws, Article XI, Section 11.4 and LTSEG Bylaws, Article X, Section 10.2.

⁸⁰ See LTSE Bylaws, Article XI, Section 11.4; and LTSEG Bylaws Article X, Section 10.3.

⁸¹ See LTSEG Bylaws, Article X, Section 10.3.

⁸² See LTSEG Bylaws, Article X, Section 10.3.

⁸³ See LTSEG Bylaws, Article X, Section 10.6.

and, if such change is required to be filed with the Commission pursuant to Section 19(b) of the Act and the rules and regulations thereunder, such change shall not be effective until filed with and effective by operation of law, or filed with, and approved by, the Commission.⁸⁴

The Commission believes that the provisions discussed in this section, which are designed to help ensure the independence of LTSE's regulatory function and facilitate the ability of LTSE to carry out its regulatory responsibilities under, and operate in a manner consistent with, the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁸⁵

Further, Section 19(h)(1) of the Act⁸⁶ provides the Commission with the authority "to suspend for a period not exceeding twelve months or revoke the registration of [an SRO], or to censure or impose limitations upon the activities, functions, and operations of [an SRO], if [the Commission] finds, on the record after notice and opportunity for hearing, that [the SRO] has violated or is unable to comply with any provision of the Act, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance . . ." with any such provision by its members (including associated persons thereof). If the Commission were to find, or become aware of, through staff review and inspection or otherwise, facts indicating any violations of the Act, including without limitation

⁸⁴ See LTSEG Certificate, Article IX, Section (A)1; and LTSEG Bylaws, Article IX.

⁸⁵ 15 U.S.C. 78f(b)(1).

⁸⁶ See 15 U.S.C. 78s(h)(1).

Sections 6(b)(1) and 19(g)(1),⁸⁷ these matters could provide the basis for a disciplinary proceeding under Section 19(h)(1) of the Act.

The Commission also notes that, even in the absence of the governance provisions described above, under Section 20(a) of the Act any person with a controlling interest in LTSE would be jointly and severally liable with and to the same extent that LTSE is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.⁸⁸ In addition, Section 20(e) of the Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder.⁸⁹ Further, Section 21C of the Act authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.⁹⁰ These provisions are applicable to all entities’ dealings with LTSE, including LTSEG.

3. Regulatory Oversight Committee

The regulatory operations of LTSE will be monitored by the Regulatory Oversight Committee of the Exchange Board. The Regulatory Oversight Committee will consist of at least three members, all of whom must be Independent Directors.⁹¹ The Regulatory Oversight

⁸⁷ 15 U.S.C. 78f(b)(1); 15 U.S.C. 78s(g)(1).

⁸⁸ 15 U.S.C. 78t(a).

⁸⁹ 15 U.S.C. 78t(e).

⁹⁰ 15 U.S.C. 78u-3.

⁹¹ See LTSE Bylaws, Article V, Sections 5.2(a) and 5.6(c). The Regulatory Oversight Committee is responsible for reviewing LTSE’s regulatory budget, and also will meet regularly with the Chief Regulatory Officer.

Committee will be responsible for overseeing the adequacy and effectiveness of LTSE's regulatory and SRO responsibilities, assessing LTSE's regulatory performance, and assisting the Exchange Board (and committees of the Exchange Board) in reviewing LTSE's regulatory plan and the overall effectiveness of LTSE's regulatory functions.⁹²

Further, a Chief Regulatory Officer ("CRO") of LTSE will have general supervision over LTSE's regulatory operations, including responsibility for overseeing LTSE's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which LTSE is a party.⁹³ The Regulatory Oversight Committee, in consultation with the Chief Executive Officer of LTSE, will be responsible for establishing the goals, assessing the performance, fixing the compensation of the CRO and for recommending personnel actions involving the CRO and senior regulatory personnel.⁹⁴

4. Regulatory Funding and Services

As a prerequisite for the Commission's granting of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act.⁹⁵ Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and rules thereunder and

⁹² See LTSE Bylaws, Article V, Section 5.6(c).

⁹³ See LTSE Bylaws, Article VII, Section 7.9.

⁹⁴ See LTSE Bylaws, Article V, Section 5.6(c). To the extent that the Chief Executive Officer of LTSE has any indirect supervisory responsibility for the role or function of the CRO, including but not limited to, implementation of the budget for the regulatory function or regulatory personnel matters, the Regulatory Oversight Committee will take all steps reasonably necessary to ensure that the Chief Executive Officer does not compromise the regulatory autonomy and independence of the CRO or the regulatory function. Id.

⁹⁵ See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

the rules of the exchange.⁹⁶ The discussion below summarizes how LTSE proposes to conduct and structure its regulatory operations.

a. Regulatory Funding

To help ensure that LTSE has and will continue to have adequate funding to be able to meet its responsibilities under the Act, LTSE represents that, if the Commission approves LTSE's application for registration as a national securities exchange, LTSEG will allocate sufficient assets to LTSE to enable the Exchange's operation.⁹⁷ Specifically, LTSE represents that LTSEG will make a cash contribution to LTSE of \$5,000,000, in addition to any previously-provided in-kind contributions, such as legal, regulatory, and infrastructure-related services.⁹⁸

LTSE also represents that such cash and in-kind contributions from LTSEG will be adequate to operate LTSE, including the regulation of the Exchange, and that LTSEG and LTSE will enter into an agreement that requires LTSEG to provide adequate funding for the Exchange's operations, including the regulation of the Exchange.⁹⁹

Further, any "Regulatory Funds" received by LTSE will not be used for non-regulatory purposes or distributed to LTSEG, but rather will be applied to fund the regulatory operations of LTSE, or, as applicable, used to pay restitution and disgorgement to customers as part of a

⁹⁶ See id. See also Section 19(g) of the Act, 15 U.S.C. 78s(g).

⁹⁷ See Form 1, Exhibit I.

⁹⁸ See id.

⁹⁹ See id. LTSE represents that this agreement will provide that LTSE will receive all fees, including regulatory fees and trading fees, payable by LTSE's members, as well as any funds received from any applicable market data fees and tape revenue, and will further provide that LTSEG will reimburse LTSE for its costs and expenses to the extent that the Exchange's assets are insufficient to meet its costs and expenses. Id.

regulatory proceeding.¹⁰⁰ Any excess non-regulatory funds, as solely determined by LTSE, will be remitted to LTSEG in accordance with LTSE Bylaws.¹⁰¹

b. Regulatory Contract with FINRA

Although LTSE will be an SRO with all of the attendant regulatory obligations under the Act, it has represented to the Commission that it intends to enter into a Regulatory Services Agreement (“RSA”) with FINRA, under which FINRA as a regulatory services provider will perform certain regulatory functions on LTSE’s behalf.¹⁰² Specifically, LTSE represents that FINRA will perform certain regulatory surveillance of trading activity on LTSE and conduct various regulatory services on behalf of LTSE, which are expected to include performance of investigation, disciplinary, and hearing services.¹⁰³ Notwithstanding the RSA, LTSE will retain legal responsibility for the regulation of its members and its market and the performance of FINRA as its regulatory services provider. Because LTSE anticipates entering into an RSA with FINRA, it has not made provisions to fulfill the regulatory services that would be undertaken by FINRA. Accordingly, the Commission is conditioning the operation of LTSE on a final RSA that specifies the services that will be provided to LTSE.

¹⁰⁰ See LTSE Bylaws, Article X, Section 10.4. LTSE Bylaws, Article I(bb) defines “Regulatory Funds” as “fees, fines, or penalties derived from the regulatory operations of [LTSE],” but such term does not include “revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of [LTSE], even if a portion of such revenues are used to pay costs associated with the regulatory operations of [LTSE].” This definition is consistent with the rules of other SROs. See, e.g., Amended and Restated By-Laws of MIAX Exchange, Article 1(II); By-Laws of NASDAQ PHLX LLC, Article I(ii); and By-Laws of NASDAQ BX, Inc., Article I(ii).

¹⁰¹ See Form 1, Exhibit I. See also LTSE Bylaws, Article XI, Section 11.5. Further, LTSE will not be required to pay any dividends if payment of such dividends would violate the Act or any other applicable law. See *id.*

¹⁰² See Form 1, Exhibit L. See also LTSE Rules 1.160(jj) and 6.170.

¹⁰³ See Form 1, Exhibit L.

The Commission believes that it is consistent with the Act for LTSE to contract with FINRA to perform certain examination, enforcement, and disciplinary functions.¹⁰⁴ These functions are fundamental elements of a regulatory program, and constitute core self-regulatory functions. The Commission believes that FINRA has the expertise and experience to perform these functions for LTSE.¹⁰⁵ However, LTSE, unless relieved by the Commission of its responsibility, bears the self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on LTSE's behalf.¹⁰⁶ In performing these regulatory functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of LTSE to perform its regulatory functions.¹⁰⁷ Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for LTSE, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws or rules thereunder by LTSE.¹⁰⁸

c. Rule 17d-2 Agreements

¹⁰⁴ For example, IEX, MIAX Exchange, MIAX PEARL, LLC, Nasdaq MRX, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange Inc., and Cboe BZX Exchange, Inc. ("Cboe BZX") have entered into RSAs with FINRA.

¹⁰⁵ See, e.g., IEX Order, supra note 48; DirectEdge Exchanges Order, supra note 59; and Nasdaq Order, supra note 35. The Commission notes that the Commission is not approving the RSA or any of its specific terms.

¹⁰⁶ See Section 19(g)(1) of the Act, 15 U.S.C. 78s(g)(1).

¹⁰⁷ For example, if failings by FINRA have the effect of leaving LTSE in violation of any aspect of LTSE's self-regulatory obligations, LTSE would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. See, e.g., IEX Order, supra note 48; Nasdaq Order and BATS Order, supra note 35; and DirectEdge Exchanges Order, supra note 59.

¹⁰⁸ See, e.g., IEX Order, supra note 48, and Nasdaq Order, supra note 35.

Section 19(g)(1) of the Act,¹⁰⁹ among other things, requires every SRO registered as either a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO's own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.¹¹⁰ Rule 17d-2 of the Act permits SROs to propose joint plans to allocate regulatory responsibilities amongst themselves for their common rules with respect to their common members.¹¹¹ These agreements, which must be filed with and declared effective by the Commission, generally cover areas where each SRO's rules substantively overlap, including such regulatory functions as personnel registration and sales practices. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO.¹¹² Such regulatory duplication would add unnecessary expenses for common members and their SROs.¹¹³

¹⁰⁹ 15 U.S.C. 78s(g)(1).

¹¹⁰ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

¹¹¹ See Section 17(d)(1) of the Act and Rule 17d-2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2, respectively. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO ("common members"). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

¹¹² Section 17(d) was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication with respect to common members. See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976) ("Rule 17d-2 Adopting Release").

¹¹³ See id.

A Rule 17d-2 plan that is declared effective by the Commission relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.¹¹⁴ Many SROs have entered into Rule 17d-2 agreements.¹¹⁵ LTSE has represented to the Commission that LTSE and FINRA intend to file a Rule 17d-2 agreement with the Commission covering common members of LTSE and FINRA.¹¹⁶ This agreement will allocate to FINRA regulatory responsibility, with respect to common members, for specified regulatory and enforcement matters arising out of specified common rules and specified provisions of the Act and the rules and regulations thereunder. In addition, LTSE has represented to the Commission that it intends to join all applicable Rule 17d-2 plans, as applicable and in the interest of its members and their “Sponsored Participants” -- entities whose access to LTSE is authorized in advance by one or more members in accordance with LTSE rules,¹¹⁷ including the multi-party Rule 17d-2 plan for the allocation of regulatory responsibilities with respect to certain Regulation NMS Rules and

¹¹⁴ See Rule 17d-2 Adopting Release, supra note 112.

¹¹⁵ See, e.g., Securities Exchange Act Release Nos. 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018) (FINRA/MIAX Exchange/MIAX PEARL); 77321 (March 8, 2016), 81 FR 13434 (March 14, 2016) (File No. 4-697) (FINRA/ISE Mercury, LLC); 73641 (November 19, 2014), 79 FR 70230 (November 25, 2014) (File No. 4-678) (FINRA/MIAX Exchange); 70053 (July 26, 2013), 78 FR 46656 (August 1, 2013) (File No. 4-663) (FINRA/Topaz Exchange n/k/a ISE Gemini, LLC); 59218 (January 8, 2009), 74 FR 2143 (January 14, 2009) (File No. 4-575) (FINRA/Boston Stock Exchange, Inc.); 58818 (October 20, 2008), 73 FR 63752 (October 27, 2008) (File No. 4-569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28087 (May 18, 2007) (File No. 4-536) (National Association of Securities Dealers, Inc. (“NASD”) n/k/a FINRA) and Chicago Board of Options Exchange, Inc. concerning the CBOE Stock Exchange, LLC); 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007) (File No. 4-529) (NASD/International Securities Exchange, LLC); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4-517) (NASD/Nasdaq).

¹¹⁶ See Form 1, Exhibit E.

¹¹⁷ Id.

the multi-party Rule 17d-2 plan for the surveillance, investigation, and enforcement of common insider trading rules.¹¹⁸

Because LTSE anticipates entering into these Rule 17d-2 agreements, it has not made provision to fulfill the regulatory obligations that would be undertaken by FINRA and other SROs under these agreements with respect to common members.¹¹⁹ Accordingly, the Commission is conditioning the operation of LTSE on approval by the Commission of a Rule 17d-2 agreement that allocates the above specified matters, and the approval of an amendment to the existing multi-party Rule 17d-2 plans specified above to add LTSE as a party.

C. LTSE Trading System

LTSE will operate a fully automated electronic order book, and will not maintain or operate a physical trading floor. Only broker-dealer members of LTSE and entities that enter into market access arrangements with members (collectively, “Users”) will have access to the LTSE system.¹²⁰ Users will be able to electronically submit orders to buy or sell securities listed or traded on the Exchange through a variety of systems.¹²¹ LTSE will allow firms to register as market makers with affirmative and negative market making obligations.¹²²

¹¹⁸ See id. See also Securities Exchange Act Release No. 65991 (December 16, 2011), 76 FR 79714 (December 22, 2011) (File No. 4-566) (notice of filing and order approving and declaring effective an amendment to the multi-party Rule 17d-2 plan relating to the surveillance, investigation, and enforcement of insider trading rules).

¹¹⁹ For common members, the regulatory obligations will be covered by the Rule 17d-2 agreements, and for LTSE members that are not also members of FINRA, the regulatory obligations will be covered by the RSA.

¹²⁰ To obtain authorized access to the LTSE System, each User must enter into a User Agreement with LTSE. See LTSE Rule 11.130(a).

¹²¹ For a discussion of the means of access to LTSE, see LTSE Form 1, Exhibit E, Section 1.

¹²² See LTSE Rules 11.150 through 11.154. LTSE’s rules relating to market makers are similar to the rules of other national securities exchanges. See, e.g., IEX Rules 11.150 through 11.154; and Cboe BZX Rules 11.5 through 11.8.

Users may submit orders to the Exchange as Limit Orders or Market Orders, with the following order parameters: Displayed; Reserve; Non-Displayed; Odd Lot; Mixed Lot; LTSE Only; Minimum Quantity; and Inter-market Sweep.¹²³ Orders may be submitted with the following time-in-force instructions: Immediate-or-Cancel; Day; Good 'til Extended Day; System Session; and Good 'til Time.¹²⁴ Users may submit orders with the display instructions of Displayed, Non-Displayed, or Reserve, but orders submitted without display instructions will be fully displayed.¹²⁵ Displayed orders will be displayed on an anonymous basis at a specified price.¹²⁶ Orders will be classified as a Round Lot, Odd Lot, or Mixed Lot.¹²⁷ Users may also choose to designate orders with an Anti-Internalization Group Identifier modifier for anti-internalization purposes to prevent executions against resting opposite side orders originating from the same market participant identifier.¹²⁸ All of these order types and parameters are similar to order types and parameters approved by the Commission and currently available on other national securities exchanges.¹²⁹

The LTSE system will continuously and automatically match orders pursuant to price/display/time priority, with displayed orders and displayed portions of orders having precedence over non-displayed orders and non-displayed portions of orders at the same price

¹²³ See LTSE Rule 11.190(a)-(b).

¹²⁴ See LTSE Rule 11.190(c).

¹²⁵ See LTSE Form 1, Exhibit E, Section 2, and LTSE Rule 11.190(b)(1)-(3).

¹²⁶ See LTSE Form 1, Exhibit E, Section 1.

¹²⁷ See LTSE Form 1, Exhibit E, Section 2, and LTSE Rule 11.180.

¹²⁸ See LTSE Form 1, Exhibit E, Section 2, and LTSE Rule 11.190(e).

¹²⁹ See, e.g., IEX Rule 11.190.

without regard to time.¹³⁰ LTSE will also utilize certain collars and constraints in an effort to reduce the occurrence of erroneous trades.¹³¹ With respect to the price of executions that would occur on LTSE, the LTSE system is designed to comply with the order protection requirements of Rule 611 of Regulation NMS¹³² by requiring that, for any execution to occur on LTSE during regular trading hours, the price must be equal to, or better than, the “protected quotation,” unless an exception to Rule 611 applies.¹³³ Orders may be executed on the Exchange during the Regular Market Session or during Pre- and Post-Market Sessions,¹³⁴ however, some order types and functionality are available only during the Regular Market Session.¹³⁵

In addition, LTSE’s rules are designed to address locked and crossed markets, as required by Rule 610(d) of Regulation NMS,¹³⁶ in that they are designed not to disseminate interest that would lock or cross a protected quote, require Users to reasonably avoid displaying interest that locks or crosses any protected quotation, and are reasonably designed to assure the reconciliation of locked or crossed interest.¹³⁷

¹³⁰ See LTSE Rule 11.220(a)(1).

¹³¹ See LTSE Rule 11.190(f) (describing the Order Collar, Crossed Market Collar, One-Sided Market Handling, and Zero Markets Handling) and LTSE Form 1, Exhibit E, Section 3. See also LTSE Rule 11.270 (Clearly Erroneous Executions).

¹³² 17 CFR 242.611.

¹³³ See LTSE Rule 11.230(a)(2). See also 17 CFR 242.600(b)(58) (defining “protected quotation”).

¹³⁴ LTSE’s Pre-Market Session will run from 8:00am ET to 9:30am ET, and its Post-Market Session will run from 4:00pm ET to 5:00pm ET. See LTSE Rule 1.160(bb)-(cc).

¹³⁵ See LTSE Rules 11.110(a) and 11.230(a)(2).

¹³⁶ 17 CFR 242.610(d).

¹³⁷ See LTSE Rule 11.310. See also LTSE Rule 11.190(g) (relating to price sliding functionality to avoid violations of Rule 610(d) of Regulation NMS, 17 CFR 242.610(d)).

LTSE will conduct an opening process for non-LTSE-listed securities at the start of its regular market session, and Users who wish to participate in the opening process may enter appropriately designated orders for queuing in the system.¹³⁸ LTSE's rules also contemplate auction processes for any securities that may be listed on LTSE, which include Opening Auctions, Closing Auctions, IPO and Halt Auctions, and Volatility Auctions.¹³⁹

Initially, LTSE will not offer any outbound routing functionality;¹⁴⁰ thus, all orders submitted to LTSE will be treated as LTSE Only,¹⁴¹ though limit orders may also include the execution instructions of Inter-Market Sweep Order, if appropriate.¹⁴²

The Commission finds that LTSE's trading rules are consistent with the Act and, in particular, the Section 6(b)(5) requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.¹⁴³

As a national securities exchange, LTSE will be a trading center whose quotations can be "automated quotations" under Rule 600(b)(3).¹⁴⁴ In turn, LTSE is designed to be an "automated

¹³⁸ See LTSE Rule 11.231.

¹³⁹ See LTSE Rule 11.350.

¹⁴⁰ See LTSE Form 1, Exhibit E, Section 2.

¹⁴¹ See LTSE Rule 11.190(b)(6).

¹⁴² See LTSE Rule 11.190(b)(12).

¹⁴³ See 15 U.S.C. 78f(b)(5). The Commission notes that LTSE's trading rules, including its rules relating to market makers, order types and parameters, priority, execution, and opening and auction processes, are similar to existing exchanges' trading rules. See, e.g., Chapter 11 of the IEX rule book.

¹⁴⁴ See LTSE Rule 11.240(c).

trading center” under Rule 600(b)(4) whose best-priced, displayed quotation would be a “protected quotation” under Rules 600(b)(57) and 600(b)(58), and for purposes of Rule 611.¹⁴⁵

At the same time, to meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, such other trading centers will be required to have sufficient notice of new protected quotations, as well as all necessary information (such as final technical specifications).¹⁴⁶ The Commission believes that it would be a reasonable policy and procedure under Rule 611(a) to require that industry participants begin treating LTSE’s best bid and best offer as a protected quotation as soon as possible but no later than 90 days after the date of this order, or such later date as LTSE begins operation as a national securities exchange. The Commission notes that it has taken the same position with other new equities exchanges.¹⁴⁷

D. Discipline and Oversight of Members

As noted above, one prerequisite for the Commission’s grant of an exchange’s application for registration is that a proposed exchange must be so organized and have the capacity to be able to carry out the purposes of the Act.¹⁴⁸ Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with the federal securities laws and rules thereunder and the rules of the exchange.¹⁴⁹ As also noted above, pursuant to the proposed RSA with FINRA, FINRA will perform many of the initial

¹⁴⁵ See 17 CFR 242.600(b)(57)-(58) and 17 CFR 242.611.

¹⁴⁶ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006) (File No. S7-10-04) (extending the compliance dates for Rule 610 and Rule 611 of Regulation NMS under the Act).

¹⁴⁷ See, e.g., BATS Order at 49505, supra note 35 and DirectEdge Exchanges Order at 13163, supra note 59.

¹⁴⁸ See 15 U.S.C. 78f(b)(1).

¹⁴⁹ See id.

disciplinary processes on behalf of LTSE.¹⁵⁰ For example, FINRA will investigate potential securities laws violations, issue complaints, and conduct hearings pursuant to LTSE rules. Appeals from disciplinary decisions will be heard by the LTSE Appeals Committee¹⁵¹ and the LTSE Appeals Committee's decision shall be final.¹⁵² In addition, the Exchange Board on its own initiative may order review of a disciplinary decision.¹⁵³

The LTSE Bylaws and LTSE rules provide that the Exchange has disciplinary jurisdiction over its members so that it can enforce its members' compliance with its rules and the federal securities laws and rules.¹⁵⁴ The Exchange's rules also permit LTSE to sanction members for violations of its rules and violations of the federal securities laws and rules by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member, or any other fitting sanction.¹⁵⁵ LTSE's rules also provide for the imposition of fines for certain minor rule violations in lieu of commencing disciplinary proceedings.¹⁵⁶ Accordingly, as a condition to the operation of LTSE, a Minor Rule Violation

¹⁵⁰ See supra notes 102-103 and accompanying text. See also LTSE Rule 9.001 (noting that LTSE and FINRA are parties to a regulatory contract, pursuant to which FINRA will perform certain functions described in the Rule 9.000 Series on behalf of LTSE).

¹⁵¹ See LTSE Rule 1.160(u).

¹⁵² See LTSE Rule 9.349(c) (providing, among other things, that if the Exchange Board does not call the disciplinary proceeding for review, the proposed written decision of the LTSE Appeals Committee shall become final).

¹⁵³ See LTSE Rule Series 9.350.

¹⁵⁴ See generally LTSE Bylaws, Article X and LTSE Rules Chapters 8 and 9.

¹⁵⁵ See LTSE Rule 2.120.

¹⁵⁶ See LTSE Rule 9.216(b).

Plan (“MRVP”) filed by LTSE under Act Rule 19d-1(c)(2) must be declared effective by the Commission.¹⁵⁷

The Commission finds that the LTSE Bylaws and rules concerning its disciplinary and oversight programs are consistent with the requirements of Sections 6(b)(6) and 6(b)(7)¹⁵⁸ of the Act in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of LTSE provide it with the ability to comply, and with the ability to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of LTSE.¹⁵⁹

E. Listing and Trading on LTSE

1. Registration Under Section 12(b) of the Act

Once LTSE begins operations as a national securities exchange, a security will be considered for listing on LTSE only if such security is registered pursuant to Section 12(b) of the Act¹⁶⁰ or such security is subject to an exemption.¹⁶¹ An issuer may register a security pursuant to Section 12(b) by submitting to LTSE a listing application that provides certain required information.¹⁶² LTSE will review the listing application and, if the listing application is

¹⁵⁷ 17 CFR 240.19d-1(c)(2).

¹⁵⁸ 15 U.S.C. 78f(b)(6) and (b)(7).

¹⁵⁹ See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

¹⁶⁰ 15 U.S.C. 78j(b).

¹⁶¹ 15 U.S.C. 78j(c); LTSE Rule 14.203.

¹⁶² 15 U.S.C. 78j(b); LTSE Rule 14.202. Prior to submitting a listing application to LTSE, the issuer will be required to participate in a free confidential pre-application eligibility review, in which LTSE will determine whether the issuer meets its listing criteria and is eligible to submit a listing application. See LTSE Rule 14.201, which is based on the equivalent Rule 14.201 of IEX’s rules.

approved, will certify to the Commission that it has approved the security for listing and registration.¹⁶³ Registration of the security will become effective thirty days after the receipt of such certification by the Commission or within a shorter period of time as the Commission may determine.¹⁶⁴ Once registration is effective, the security is eligible for listing on LTSE.¹⁶⁵

2. Initial and Continuing Listing Standards

The Commission finds that LTSE's proposed initial and continuing listing standards are consistent with the requirements of the Act. With respect to the standards relating to the listing and delisting of companies, including procedures and prerequisites for initial and continued listing on LTSE, the obligations of issuers with securities listed on LTSE, as well as rules describing the application and qualification process, LTSE's proposed listing rules for securities are virtually identical to those of IEX.¹⁶⁶ With respect to LTSE Rule 14.201, which is substantially similar to the analogous rule of IEX, LTSE requires a company seeking the initial listing of one or more classes of securities on LTSE to participate in a free confidential pre-application eligibility review to determine whether the company meets LTSE's listing criteria and, if, upon completion of this review, LTSE determines that a company is eligible for listing, LTSE will notify that company in writing that it has been cleared to submit an original listing application. The Commission notes that, if, upon completion of this review, the Exchange

¹⁶³ See LTSE Rule 14.203(f); 15 U.S.C. 78l(d).

¹⁶⁴ 15 U.S.C. 78l(d).

¹⁶⁵ See LTSE Rule 14.203(f); 15 U.S.C. 78l(d).

¹⁶⁶ LTSE's proposed initial and continuing listing standards for securities to be listed and traded on LTSE are virtually identical to the current rules for IEX, except that LTSE will not have listing criteria for exchange-traded funds, portfolio depository receipts, and index fund shares. The Commission has previously determined that the initial and continuing listing standards of IEX are consistent with the Act. See LTSE Rules, Chapter 14 and IEX Rules, Chapter 14.

determines that a company is ineligible for listing, the company may request a review of LTSE's determination pursuant to the process set forth in LTSE Rule 9.555.¹⁶⁷

3. Corporate Governance Standards

LTSE has proposed corporate governance standards in connection with securities to be listed and traded on LTSE that are substantially similar to the corporate governance listing standards of other exchanges.¹⁶⁸ Included in these standards are rules requiring a majority of directors on a listed issuer's board to be independent; rules and independence requirements relating to audit and compensation committees and the oversight of nominations; and rules requiring listed issuers to adopt codes of conduct applicable to all their directors, officers and employees.¹⁶⁹ The Commission finds that LTSE's proposed corporate governance standards for listed issuers contained in LTSE's proposed rules are consistent with the Act.¹⁷⁰ The Commission further finds that LTSE's rules satisfy the requirements of Section 10A(m) of the Act and Rule 10A-3 thereunder and Section 10C of the Act and Rule 10C-1 thereunder, relating to audit and compensation committees, respectively.¹⁷¹ The Commission believes that LTSE's corporate governance standards for listed issuers that require a fully independent audit committee are designed to promote independent and objective review and oversight of the accounting and

¹⁶⁷ See Amendment No. 2, supra note 6.

¹⁶⁸ See proposed LTSE Rule Series 14.440, and see, e.g., Nasdaq Rule Series 5600 and IEX Rule series 14.400.

¹⁶⁹ See proposed LTSE Rules 14.405 and 14.406.

¹⁷⁰ The Commission notes that it has previously determined that the corporate governance standards of other exchanges, with which LTSE's proposed rules are commensurate, are consistent with the Act. See, e.g., Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) and IEX Order, supra note 48.

¹⁷¹ See 15 U.S.C. 78f(b)(5); 15 U.S.C. 78j-1(m); 15 U.S.C. 78j-3; 17 CFR 240.10A-3; 17 CFR 240.10C-1.

auditing practices of listed issuers and to enhance audit committee independence, authority, and responsibility by implementing the standards set forth in Rule 10A-3.¹⁷² In addition, the Commission believes that LTSE's proposed requirements relating to independent compensation committees for listed issuers would benefit investors by implementing the standards set forth in Rule 10C-1, which requires that the independent directors of a listed issuer oversee executive compensation matters, consider independence criteria before retaining compensation advisers and have responsibility for the appointment, compensation and oversight of these advisers.¹⁷³ The corporate governance standards embodied in the listing rules of national securities exchanges, in particular, play an important role in assuring that companies listed for trading on the exchanges' markets observe good governance practices, including a reasoned, fair, and impartial approach for determining the compensation of corporate executives.¹⁷⁴ The Commission believes that the Exchange's rules will foster greater transparency, accountability, and objectivity in the oversight of compensation practices of listed issuers and in the decision-making processes of their compensation committees.¹⁷⁵

¹⁷² See Securities Exchange Act Release No. 47654 (April 9, 2003), 68 FR 18788 (April 16, 2003).

¹⁷³ See Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422, 38425 (June 27, 2012).

¹⁷⁴ See, e.g., Securities Exchange Act Release No. 68640 (January 11, 2013), 78 FR 4554, 4563 (January 22, 2013)(approving SR-NASDAQ-2012-109 relating to rules for compensation committees for listed companies, upon which LTSE's proposed rules for compensation committees are based).

¹⁷⁵ See id. (finding Nasdaq compensation committee rules consistent with the Act). See also Securities Exchange Act Release No. 68639 (January 11, 2013), 78 FR 4570 (January 22, 2013) (order approving NYSE's compensation committee rules, which was cited by Nasdaq as precedent for a subsequent amendment to its own rules that was filed on an immediately effective basis; see Securities Act Release No. 71037 (December 11, 2013), 78 FR 76179 (December 16, 2013) (SR-NASDAQ-2013-147).

As noted above, the Commission received one comment letter on LTSE's Form 1 application. In its comment letter, the Council of Institutional Investors ("CII") advised that it could not support LTSE's Form 1 application for two reasons. First, CII stated that the corporate governance requirements in LTSE's Form 1 application (specifically, its "Voting Rights Policy"¹⁷⁶) would "permit newly public companies to have multi-class structures with unequal voting rights in conflict with [CII's] membership approved policies supporting a one share, one vote structure" with "no sunsets on such structures."¹⁷⁷ Second, CII stated that LTSE's Form 1 application "does not include any information about LTSE's reported plans to update its application to include time-phased voting rights as a core element of its proposed corporate governance listing standards."¹⁷⁸ In addition, CII set forth its concerns about time-phased voting rights, including disproportionate empowerment of long-term stakeholders and challenges in tracking ownership of those with super-voting rights.¹⁷⁹

The issues raised in the CII Letter do not provide a basis for the Commission to reject LTSE's Form 1 application. Commission rules do not mandate that the rules of a national securities exchange must provide for a "one share, one vote" requirement for listed issuers. In approving the current rules governing the voting rights of shareholders of common stock listed on the NYSE, American Stock Exchange ("Amex"), or included on Nasdaq, the Commission stated that the new rules would protect investors from disparate voting rights plans that resulted

¹⁷⁶ See LTSE Rule 14.413, Supplementary Material .01.

¹⁷⁷ CII Letter at 1-2.

¹⁷⁸ Id.

¹⁷⁹ CII Letter at 6-7.

in disenfranchisement.¹⁸⁰ At the same time, however, the Commission stated that the new voting rights rules would provide flexibility to listed companies to devise their corporate capital structure by permitting disparate voting rights plans that do not disenfranchise existing shareholders and that a company could, for example, have a permissible dual class structure resulting from an initial public offering or the issuance of lower voting stock.¹⁸¹ The Commission notes that the Voting Rights Policy, as set forth in LTSE's proposed listing standards, is consistent with the current voting rights provisions of NYSE and Nasdaq, as acknowledged by CII in its letter.¹⁸² Other national securities exchanges that provide for the listing of equity securities also maintain shareholder voting rights provisions consistent with the NYSE and Nasdaq rules.¹⁸³ As noted above, Commission rules do not mandate a "one share, one vote" requirement for listed issuers.

For the forgoing reasons, the Commission believes that it is appropriate to approve LTSE's Form 1 application with the inclusion of the Voting Rights Policy. With respect to the CII's concerns about time-phased voting rights, no such rights are proposed by LTSE in its Form 1 application. Once LTSE is registered as a national securities exchange, LTSE is required to file any changes to its rules as a proposed rule change under Section 19(b) of the Act and Rule

¹⁸⁰ See Securities Exchange Act Release No. 35121 (December 19, 1994), 59 FR 66570 (December 27, 1994) (order approving rules regarding shareholder voting rights for NYSE, Amex, and National Association of Securities Dealers, Inc., on behalf of Nasdaq) ("1994 Approval Order").

¹⁸¹ Id.

¹⁸² CII Letter at 8. See also 1994 Approval Order, supra note 180.

¹⁸³ See, e.g., Securities Exchange Act Release No. 37481 (July 25, 1996), 61 FR 40270 (August 1, 1996) (approving a similar voting rights provision for Chicago Stock Exchange, Inc., n/k/a NYSE Chicago, Inc.; the provision is now contained in Rules of NYSE Chicago, Inc., Article 22, Rule 20). See also IEX Rule 14.413, Supplementary Material .01, which appears to be the model for the LTSE's proposed Voting Rights Policy.

19b-4,¹⁸⁴ and the public will be provided notice and given the opportunity to provide comments on any such proposed rule change.

4. Trading Pursuant to Unlisted Trading Privileges

As an exchange, LTSE will be permitted by Section 12(f) of the Act¹⁸⁵ to extend unlisted trading privileges to securities listed and registered on other national securities exchanges, subject to Commission rules. In particular, Rule 12f-5 under the Act requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.¹⁸⁶ The Commission notes that Chapter 14 of LTSE's rules provides for transactions in securities that meet specified criteria. Accordingly, pursuant to Section 12(f) of the Act and Rule 12f-5 thereunder, the Exchange will be permitted to extend unlisted trading privileges to securities of the same class, subject to the trading rules of the Exchange.¹⁸⁷

F. Section 11(a) of the Act

Section 11(a)(1) of the Act¹⁸⁸ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person,

¹⁸⁴ 15 U.S.C. 78s(b) and 17 CFR 240.19b-4.

¹⁸⁵ 15 U.S.C. 78j(f).

¹⁸⁶ See 17 CFR 240.12f-5. See also Securities Exchange Act Release No. 35737 (April 21, 1995), 60 FR 20891 (April 28, 1995) (File No. S7-4-95) (adopting Rule 12f-5 under the Act).

¹⁸⁷ See proposed LTSE Rule 11.120, which states: "Any classes of securities listed or admitted to unlisted trading privileges on the Exchange shall be eligible to become designated for trading on the Exchange in accordance with the Rules of Chapter 14." LTSE's rules currently do not provide for the trading of exchange-traded funds, portfolio depository receipts, and index fund shares, or for the trading of options, security futures, or other similar instruments.

¹⁸⁸ 15 U.S.C. 78k(a)(1).

or an account over which it or its associated person exercises investment discretion (collectively, “covered accounts”) unless an exception applies. Rule 11a2-2(T) under the Act,¹⁸⁹ known as the “effect versus execute” rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;¹⁹⁰ (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, LTSE requested that the Commission concur with LTSE’s conclusion that LTSE members that enter orders into the LTSE trading system satisfy the requirements of Rule 11a2-2(T).¹⁹¹ For the reasons set forth below, the Commission believes that LTSE members entering orders into the LTSE trading system will satisfy the requirements of Rule 11a2-2(T).

The Rule’s first requirement is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that

¹⁸⁹ 17 CFR 240.11a2-2(T).

¹⁹⁰ This prohibition also applies to associated persons. The member may, however, participate in clearing and settling the transaction.

¹⁹¹ See Letter from Eric Ries, Chief Executive Officer, LTSE, to Brent Fields, Director, Office of the Secretary, and Brett Redfearn, Director, Division of Trading and Markets, Commission, dated March 8, 2019 (“LTSE 11(a) Letter”).

the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.¹⁹² LTSE has represented that LTSE does not have a physical trading floor, and the LTSE trading system will receive orders from members electronically through remote terminals or computer-to-computer interfaces.¹⁹³ The Commission believes that the LTSE trading system satisfies this off-floor transmission requirement.

Second, the Rule requires that the member and any associated person not participate in the execution of its order after the order has been transmitted. LTSE represented that at no time following the submission of an order is a member or an associated person of the member able to acquire control or influence over the result or timing of the order's execution.¹⁹⁴ According to LTSE, the execution of a member's order is determined solely by what quotes and orders are

¹⁹² See, e.g., Nasdaq Order, *supra* note 35; Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving NOM options trading); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release").

¹⁹³ See LTSE 11(a) Letter, *supra* note 191.

¹⁹⁴ See *id.* LTSE notes that a member may cancel or modify the order, or modify the instructions for executing the order, after the order has been transmitted, provided that such cancellations or modifications are transmitted from off an exchange floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) ("1978 Release") (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

present in the system at the time the member submits the order, and the order priority based on the LTSE rules.¹⁹⁵ Accordingly, the Commission believes that an LTSE member and its associated persons do not participate in the execution of an order submitted to the LTSE trading system.¹⁹⁶

Third, Rule 11a2-2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the LTSE trading system, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.¹⁹⁷ LTSE has represented that the design of the LTSE trading system ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to LTSE.¹⁹⁸ Based on LTSE's representation, the Commission believes that the LTSE trading system satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the

¹⁹⁵ See LTSE 11(a) Letter, supra note 191. The Commission notes that LTSE has proposed rules for the registration, obligations, and operation of market makers on LTSE. LTSE has represented that market makers, if any, will submit quotes in the form of orders in their assigned symbols.

¹⁹⁶ See, e.g., BATS Order at 49505, supra note 35 and DirectEdge Exchanges Order at 13164, supra note 59.

¹⁹⁷ See, e.g., BATS Order at 49505, supra note 35 and DirectEdge Exchanges Order at 13164, supra note 59. In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, supra note 192.

¹⁹⁸ See LTSE 11(a) Letter, supra note 191.

initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.¹⁹⁹ LTSE members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.²⁰⁰

G. Exemption from Section 19(b) of the Act With Regard to FINRA and NYSE Rules

Incorporated by Reference

LTSE proposes to incorporate by reference certain FINRA and NYSE rules as LTSE rules.²⁰¹ Thus, for certain LTSE rules, Exchange members will comply with an LTSE rule by

¹⁹⁹ See, e.g., BATS Order at 49505, supra note 35 and DirectEdge Exchanges Order at 13164, supra note 59. In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, supra note 194 (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

²⁰⁰ LTSE represented that it will advise its membership through the issuance of an Information Circular that those members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption. See LTSE 11(a) Letter, supra note 191.

²⁰¹ See LTSE Rule 1.170. See Letter from Eric Ries, Chief Executive Officer, LTSE, to Brent Fields, Director, Office of the Secretary, and Brett Redfearn, Director, Division of Trading and Markets, Commission, dated March 8, 2019 (“Exemption Request Letter”). See also Letter from Eric Ries, Chief Executive Officer, LTSE, to Vanessa Countryman,

complying with the FINRA or NYSE rule referenced therein.²⁰² In connection with its proposal to incorporate FINRA and NYSE rules by reference, LTSE requested, pursuant to Rule 240.0-12,²⁰³ an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those LTSE rules that are effected solely by virtue of a change to a cross-referenced FINRA or NYSE rule.²⁰⁴ LTSE proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules.

Acting Directors, Office of the Secretary, and Brett Redfearn, Director of Division of Trading and Markets, Commission, dated April 16, 2019 (“Exemption Request Letter Addendum”).

²⁰² LTSE proposes to incorporate by reference the 12000 and 13000 Series of the FINRA Manual (Code of Arbitration Procedures for Customer Disputes and Code of Arbitration Procedures for Industry Disputes). See LTSE Rule 12.110 (Arbitration). In addition, LTSE proposes to incorporate by reference FINRA Rules 4360 (Fidelity Bonds), 2090 (Know Your Customer), 2111 (Suitability), 2241 (Research Analysts and Research Reports), 2210 (Communications with the Public), 3230 (Telemarketing), 4560 (Short-Interest Reporting), 4110 (Capital Requirements), 4120 (Regulatory Notification and Business Curtailment), 4140 (Audit), 4511 (General Requirements), 4512 (Customer Account Information), 4513 (Records of Written Customer Complaints), 3130 (Annual Certification of Compliance and Supervisory Procedures), 3210 (Accounts At Other Broker-Dealers and Financial Institutions), 5310 (Best Execution and Interpositioning), 5270 (Front Running of Block Transactions), 4590 (Synchronization of Member Business Clocks), 7440 (Recording of Order Information), 7450 (Order Data Transmission Requirements), 2268 (Requirements When Using Predispute Arbitration Agreements for Customer Accounts). See LTSE Rules 2.240 (Fidelity Bonds), 3.150 (Know Your Customer), 3.170 (Suitability), 3.230 (Payments Involving Publications that Influence the Market Price of a Security), 3.280 (Communications with Customers and the Public), 3.292 (Telemarketing), 3.293 (Short-Interest Reporting), 4.110 (Capital Compliance), 4.120 (Regulatory Notification and Business Curtailment), 4.140 (Audit), 4.511 (General Requirements), 4.512 (Customer Account Information), 4.513 (Record of Written Customer Complaints), 5.130 (Annual Certification of Compliance and Supervisory Procedures), 5.170 (Transactions for or by Associated Persons), 10.220 (Best Execution and Interpositioning), 10.260 (Front Running of Block Transactions), 11.420(c), (d) and (e) (Order Audit Trail System Requirements), 12.110 (Arbitration), respectively. LTSE also proposes to incorporate by reference certain definitions from NYSE Rule 7410. See LTSE Rule 11.420(a) (Order Audit Trail System Requirements).

²⁰³ See 17 CFR 240.0-12.

²⁰⁴ See Exemption Request Letter and Exemption Request Letter Addendum, supra note 201.

LTSE agrees to provide written notice to its members whenever a proposed rule change to a FINRA or NYSE rule that is incorporated by reference is proposed and whenever any such proposed change is approved by the Commission or otherwise becomes effective.²⁰⁵

Using its authority under Section 36 of the Act,²⁰⁶ the Commission is hereby granting LTSE's request for an exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that LTSE proposes to incorporate by reference.²⁰⁷ This exemption is conditioned upon LTSE providing written notice to its members whenever FINRA or the NYSE proposes to change a rule that LTSE has incorporated by reference. The Commission believes that this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rules of more than one SRO.

H. Conclusion

IT IS ORDERED that the application of LTSE for registration as a national securities exchange be, and it hereby is, granted.

IT IS FURTHERED ORDERED that operation of LTSE is conditioned on the

²⁰⁵ LTSE will provide such notice through a posting on the same website location where LTSE posts its own rule filings pursuant to Rule 19b-4 under the Act, within the required time frame. The website posting will include a link to the location on the FINRA or NYSE website where FINRA's or NYSE's proposed rule change is posted. See id.

²⁰⁶ 15 U.S.C. 78mm.

²⁰⁷ The Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act. See, e.g., IEX Order, supra note 48; ISE Mercury Order, supra note 50; MIAx Pearl Order, MIAx Pearl Order and BATS Order, supra note 35; DirectEdge Exchanges Order, supra note 59.

satisfaction of the requirements below:

A. Participation in National Market System Plans. LTSE must join the Consolidated Tape Association Plan, the Consolidated Quotation Plan, the Nasdaq UTP Plan, the National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS, the Regulation NMS Plan to Address Extraordinary Market Volatility, the Plan for the Selection and Reservation of Securities Symbols, and the National Market System Plan Governing the Consolidated Audit Trail.

B. Intermarket Surveillance Group. LTSE must join the Intermarket Surveillance Group.

C. Minor Rule Violation Plan. A MRVP filed by LTSE under Rule 19d-1(c)(2) must be declared effective by the Commission.²⁰⁸

D. Rule 17d-2 Agreement. An agreement pursuant to Rule 17d-2²⁰⁹ that allocates regulatory responsibility for those matters specified above²¹⁰ must be approved by the Commission, or LTSE must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. Participation in Multi-Party Rule 17d-2 Plans. LTSE must become a party to the multi-party Rule 17d-2 agreements concerning the surveillance, investigation, and enforcement of common insider trading rules.

F. RSA. LTSE must finalize the provisions of the RSA with its regulatory

²⁰⁸ 17 CFR 240.19d-1(c)(2).

²⁰⁹ 17 CFR 240.17d-2.

²¹⁰ See supra notes 116-117 and accompanying text.

services provider, as described above, that will specify the LTSE and Commission rules for which the regulatory services provider will provide certain regulatory functions, or LTSE must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

IT IS FURTHER ORDERED, pursuant to Section 36 of the Act,²¹¹ that LTSE shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the FINRA and NYSE rules that LTSE proposes to incorporate by reference into LTSE's rules, subject to the conditions specified in this Order.

By the Commission.

Eduardo A. Aleman
Deputy Secretary

²¹¹ 15 U.S.C. 78mm.

