



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97399]

### **Order Granting Application by Long-Term Stock Exchange, Inc. for an Exemption, Pursuant to Section 36(a) of the Exchange Act, from the Rule Filing Requirements of Section 19(b) of the Exchange Act with Respect to Certain Rules Incorporated by Reference**

April 28, 2023.

The Long-Term Stock Exchange, Inc. (“LTSE” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission” or “SEC”) an application<sup>1</sup> for an exemption under Section 36(a) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> and Rule 0-12 thereunder<sup>3</sup> from the rule filing requirements of Section 19(b) of the Exchange Act<sup>4</sup> with respect to the rules of the Exchange relating to continuing education. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

LTSE has requested that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to LTSE Rule 2.154 (Continuing Education) effected solely by virtue of changes to Financial Industry Regulatory

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<sup>1</sup> See Letter from James G. Buckley, Chief Regulatory Officer, LTSE, to Vanessa Countryman, Office of the Secretary, SEC, dated April 19, 2023 (“Exemptive Request”).

<sup>2</sup> 15 U.S.C. 78mm.

<sup>3</sup> 17 CFR 240.0-12 (Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act).

<sup>4</sup> 15 U.S.C. 78s(b).

Authority, Inc. (“FINRA”) Rule 1240 (Continuing Education) that are incorporated by reference into LTSE Rule 2.154. Specifically, the Exchange requests that it be permitted to incorporate by reference a change made to FINRA Rule 1240 without the need for the Exchange to separately file a similar proposed rule change pursuant to Section 19(b) of the Exchange Act. The Exchange believes that this exemption is appropriate because it will promote consistency between LTSE and FINRA rules pertaining to continuing education, which are not trading rules.<sup>5</sup>

As a condition of the requested exemption, LTSE has agreed to provide written notice to its members whenever a change is proposed to FINRA continuing education rules that are incorporated by reference into LTSE’s continuing education rules.<sup>6</sup> Such notice would alert the Exchange’s members to the FINRA proposed rule change and give them an opportunity to comment on the proposal.<sup>7</sup> The Exchange would similarly inform members in writing when the Commission approves any such proposed rule change.<sup>8</sup>

The Commission has issued exemptions similar to LTSE’s request.<sup>9</sup> In granting one such exemption in 2022, the Commission repeated an earlier Commission statement that it would consider similar future exemption requests from other SROs, provided that:

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<sup>5</sup> Exemptive Request, supra note 1, at pp. 1-2. A self-regulatory organization (“SRO”) wishing to incorporate rules of another SRO by reference may submit a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, if, among other things, the rules to be incorporated are categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration). See also Exchange Act Release No. 49260 (Feb. 17, 2004), 69 FR 8500 (Feb. 24, 2004).

<sup>6</sup> LTSE will provide such notice via a posting on the same website location where it posts its own rule filings pursuant to and within the timeframe required by Rule 19b-4(1) under the Exchange Act. The website posting will include a link to the location on FINRA’s website where the applicable proposed rule change is posted. Exemptive Request, supra note 1, at p. 2, n.7.

<sup>7</sup> Exemptive Request, supra note 1, at p. 2.

<sup>8</sup> Id.

<sup>9</sup> See, e.g., Exchange Act Release No. 94707 (Apr. 12, 2022), 87 FR 22962 (Apr. 18, 2022) (order granting The Nasdaq Stock Market LLC and five affiliated national securities exchanges an exemption under Section 36(a) of the Exchange Act from the rule

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0-12 under the Exchange Act;
- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.<sup>10</sup>

The Exchange has satisfied each of these conditions. Moreover, granting LTSE an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and Exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.<sup>11</sup> The Commission therefore finds it appropriate in the public interest, and consistent with the protection of investors, to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rule the Exchange has incorporated by reference.

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filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference FINRA rules); Exchange Act Release No. 83040 (Apr. 12, 2018), 83 FR 17198 (Apr. 18, 2018) (order granting MIAX PEARL, LLC, an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Miami International Securities Exchange, LLC); Exchange Act Release No. 61534 (Feb. 18, 2010), 75 FR 8760 (Feb. 25, 2010) (order granting BATS Exchange, Inc., an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Chicago Board Options Exchange, Inc., FINRA, and the New York Stock Exchange, LLC).

<sup>10</sup> See Exchange Act Release No. 94707 (Apr. 12, 2022), 87 FR 22962 (Apr. 18, 2022).

<sup>11</sup> See, e.g., 83 FR 17198, 17199 & n.15.

Accordingly, it is ordered, pursuant to Section 36 of the Exchange Act,<sup>12</sup> that LTSE is exempt from the rule filing requirements of Section 19(b) of the Exchange Act with respect to a change to LTSE Rule 2.154 resulting solely from changes made to FINRA Rule 1240 without the need for LTSE to separately file, pursuant to Section 19(b) of the Exchange Act, a proposed rule change similar to the one filed by FINRA, provided that LTSE promptly provides written notice to its members whenever a change is proposed to FINRA Rule 1240, and provided that it informs its members in writing when the Commission approves any such proposed change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>12</sup> 15 U.S.C. 78mm.

<sup>13</sup> 17 CFR 200.30-3(a)(76).