



Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

June 8, 2021

Re: Request for Exemption from the Certain Requirements regarding Protected Quotations under Regulation NMS

Dear Ms. Countryman:

Long-Term Stock Exchange, Inc. (“LTSE” or the “Exchange”) respectfully requests that the Securities and Exchange Commission (“Commission” or “SEC”) provide exemptive relief to LTSE pursuant to the Commission’s authority under Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and/or Rule 611(d) of Regulation NMS under the Exchange Act² from the requirement in Rule 600(b)(70)(iii) of Regulation NMS under the Exchange Act that a protected bid or protected offer be limited to one automated quotation for a national securities exchange, thereby permitting LTSE to have two protected quotations, one for the LTSE market and one for a proposed SRO display-only facility (“DOF”) of the LTSE (“LTSE DOF”).

¹ Section 36 of the Exchange Act provides, in relevant part, that the “Commission, by rule, regulation, or order, may 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 this title 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.”

² Rule 611(d) of Regulation NMS states that “[t]he Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”

LTSE's proposal to operate a DOF, similar to the Alternative Display Facility ("ADF") once operated by FINRA, is designed to bring more displayed liquidity to the market, thereby enhancing public price discovery to the benefit of all market participants. The proposed LTSE DOF would provide a new and enhanced opportunity for alternative trading systems ("ATs") and other over-the-counter ("OTC") market participants to display their trading interest in the public markets. This opportunity to strengthen liquidity, support price discovery and contribute to market transparency is in keeping with the goals recently espoused by Chair Gensler.³ To provide these benefits to the market, however, it is critical for the proposed LTSE DOF to maintain its own protected quotation, as contemplated in the FINRA ADF rules. The requested exemption would permit the proposed LTSE DOF to display a protected quotation in addition to the protected quotation for the LTSE exchange market. Importantly, if approved, the exemption would not result in LTSE having two protected quotes with respect to trading activity on the LTSE exchange market; rather, the protected quote facilitated by the exemption is required solely to permit members of the OTC market that wish to display liquidity to do so via a protected quotation. All transactions effected pursuant to the requested protected quotation would be executed on the ATS or other OTC market participant responsible for the protected quotation, not on the LTSE. Accordingly, LTSE believes that the requested exemption will provide enhanced market transparency and competition and is consistent with the SEC's goals, including the goals of Regulation NMS. As a result, LTSE believes that the requested relief is "necessary or appropriate in the public interest, and is consistent with the protection of investors."

As discussed further below, the proposed exemption is intended to further the Commission's long-standing goal of encouraging greater displayed liquidity in the public markets for NMS stocks.⁴ Therefore, although the proposed exemption is requested by LTSE, it is broadly crafted to permit any

³ See, e.g., Chair Gary Gensler, Testimony Before the House Committee on Financial Services (May 6, 2021).

⁴ Securities Exchange Act Rel. No. 51808 (June 9, 2005), 70 Fed. Reg. 37496, 37526 (June 29, 2005) ("Reg NMS Adopting Release") ("Displayed limit orders are the primary source of public price discovery. They typically set quoted spreads, supply liquidity, and in general establish the public 'market' for a stock. The quality of execution for marketable orders, which, in turn, trade with displayed liquidity, depends to a great extent on the quality of markets established by limit orders (*i.e.*, the narrowness of quoted spreads and the available liquidity at various price levels).")

national securities exchange seeking to offer a DOF in accordance with its terms to do so without going through the artificial process of registering an entirely new exchange solely for that purpose. Finally, while LTSE believes that the proposed exemption is squarely in line with Commission objectives and the goals of the national market system more broadly, LTSE would support a determination by the Commission to seek public comment on the proposed exemption, should it deem such a step necessary.

A. Proposed LTSE SRO Display-Only Facility

LTSE proposes to operate a DOF, referred to as the LTSE DOF, which would provide broker-dealers that elect to become registered LTSE DOF Participants with a facility for the display of quotations. The LTSE DOF would provide a mechanism for ATSS and other OTC market participants to display their best priced quotations or orders in a manner consistent with obtaining protected quote status under Rule 611 of Regulation NMS under the Exchange Act.

Under LTSE's proposal, the LTSE DOF best bid and offer would be included in the consolidated data stream for the securities in which quotations are displayed. As a DOF, the LTSE DOF would not provide an automated order routing functionality, execution facilities, or linkages between LTSE DOF Participant trading centers. Instead, as previously permitted and discussed by the Commission,⁵ LTSE would require LTSE DOF Participant trading centers displaying bids or offers to provide direct electronic access to all other LTSE DOF Participant trading centers and provide registered broker-dealers that are not LTSE DOF Participant trading centers direct electronic access and allow for indirect electronic access. Any execution of orders on the LTSE DOF would occur on the LTSE DOF Participant displaying the quote rather than on the LTSE exchange. LTSE does not currently propose to provide its participants with the ability to report or compare trades via the facilities of the LTSE exchange, although it could do so in the future. Instead, LTSE currently proposes to continue to have trade reporting and comparison occur via trade reporting facilities used by LTSE DOF Participants. All LTSE members in good standing would be eligible to participate in the LTSE DOF, pending execution

⁵ Reg NMS Adopting Release at 37548-9.

of appropriate contracts and meeting specific requirements as set forth by LTSE.

LTSE would be required to file with the Commission a proposed rule change to implement the LTSE DOF. The proposed rules for the LTSE DOF would be similar to those adopted by FINRA with regard to its DOF, the ADF.⁶

B. Exemptive Relief related to Protected Quotations

1. Protected Quotations for LTSE Market and LTSE DOF

Rule 611 of Regulation NMS, referred to as the Order Protection Rule, addresses intermarket trade-throughs of displayed quotations in NMS stocks. Rule 611(a)(1) requires a trading center to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an exception set forth in the Rule. Rule 600(b)(71) of Regulation NMS defines a “protected quotation” to mean “a protected bid or a protected offer.” Rule 600(b)(70) of Regulation NMS, in turn, defines a “protected bid or protected offer” to mean:

a quotation in an NMS stock that: (i) Is displayed by an automated trading center; (ii) Is disseminated pursuant to an effective national market system plan; and (iii) Is an automated quotation that is the best bid or best offer of a national securities exchange, or the best bid or best offer of a national securities association.

Accordingly, a protected quotation, with respect to a national securities exchange, is “an automated quotation that is the best bid or best offer of a national securities exchange.” Therefore, the definition of a protected quotation is limited to a single best bid or best offer for each exchange. To implement the proposed LTSE DOF, the LTSE requests an exemption from this requirement to permit the LTSE to have two protected quotations for a security, one for the LTSE exchange market and one for the proposed LTSE DOF. Furthermore, LTSE proposes that the Commission approve the

⁶ For FINRA ADF Rules, see FINRA Rules 6210-6280.

exemption such that it would permit any national securities exchange that offers a DOF pursuant to the terms of any exemption granted pursuant to this request to have two protected quotations for a security, one for the exchange's market and one for the exchange's DOF.

2. Conditions to Exemptive Relief

LTSE proposes to condition the requested exemptive relief upon the following:

- A national securities exchange would be limited to offering only one protected quotation from one DOF. Accordingly, a national securities exchange would be prohibited from having more than two protected quotations for a security, one for its exchange market and one for its DOF. Such a limitation would address potential concerns regarding the unconstrained proliferation of protected quotations.
- The best bids, offers and other market data related to a DOF offered by a national securities exchange would be provided solely to the consolidated market data feeds, not to proprietary market data feeds, thereby limiting costs related to obtaining access to the protected quotations of the DOF offered by a national securities exchange.
- The national securities exchange offering the DOF would not charge fees to participants in the DOF for connecting to the DOF. The limitation on connection fees would act to constrain the costs related to the participation in the DOF offered by a national securities exchange. For the avoidance of doubt, a national securities exchange offering the DOF may charge other fees to participants in the DOF as may be effected pursuant to the requirements of the Exchange Act, such as quote-based fees.

C. Benefits of Proposed Exemptive Relief

1. Enhanced Quote Transparency and Market Competition

There are strong policy reasons to support the proposed exemptive relief, including enhanced quote transparency and market competition. By providing a quoting platform for ATs and other OTC market participants in addition to the SRO trading facilities, LTSE believes that the LTSE DOF would increase the number of publicly displayed orders, thereby improving pre-trade transparency, price discovery and market quality, including the informational efficiency of prices.

The SEC has recognized the value of providing OTC market participants with an alternative to quoting on SRO trading facilities. To this end, the SEC required the NASD to create the ADF to provide a competitive alternative to the Nasdaq trading facility, noting that “this ability to operate in the ADF is an important competitive alternative to Nasdaq or exchange affiliation.”⁷ The Commission reasoned “market makers and ECNs should continue to have the option of operating in the OTC market, rather than on an exchange or The NASDAQ Market Center.”⁸ By providing market makers and ECNs with the ADF alternative, the SEC provided these market participants with another avenue for providing liquidity to the market, thereby encouraging enhanced public price discovery.

Providing OTC market participants with an opportunity to quote other than on an exchange’s trading facilities continues to be an important market structure objective. However, the ADF operated by FINRA has not been operational for some time now, as ATs and other market participants have chosen not to participate on that system. The proposed LTSE DOF would provide ATs and other market participants with a viable and competitively priced alternative quoting venue, thereby providing enhanced market transparency and competition.

⁷ Reg NMS Adopting Release at 37542.

⁸ *Id.*

2. Precedent for Two Protected Quotations for One Self-Regulatory Organization

The history of Regulation NMS provides precedent for permitting one self-regulatory organization to have two protected quotations, one for its market and one for a DOF. When Regulation NMS was adopted, the term “protected bid or protected offer” was defined to include an automated quotation that is the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc.⁹ As such, at the time of the adoption of Regulation NMS, when The Nasdaq Stock Market was part of the NASD, Regulation NMS contemplated the NASD having two protected quotations, one for the Nasdaq Stock Market and one for the ADF.¹⁰

Due to historical reasons related to the NASD and Nasdaq, the SEC focused on two protected quotes for the NASD under Regulation NMS. Only the NASD proposed to operate a DOF at the time; no exchange contemplated offering a DOF at the time. As discussed further below, however, the definition of a DOF also applies to national securities exchanges. Given the lack of prior discussion related to protected quotations of a DOF offered by an exchange, LTSE believes that an exemption that permits an exchange to have two protected quotes would address the novel proposal of the LTSE DOF.

3. Definition of SRO-Display Only Facility

Regulation NMS specifically contemplates a national securities exchange operating a DOF. The definition of “SRO display-only facility” set forth in Regulation NMS is defined to include a facility operated by or on behalf of a national securities exchange.¹¹ Specifically, Rule 600(b)(88) of Regulation NMS defines an “SRO display-only facility” as “a facility operated by or on behalf of a national securities exchange or national securities association that displays

⁹ See Reg NMS Adopting Release at 37622 (definition of “protected bid or protected offer” in Rule 600(b)(57)).

¹⁰ The SEC recently amended the definition of “protected bid or protected offer.” The SEC deleted the references to “The Nasdaq Stock Market, Inc.” in the definition of “protected bid or protected offer.” The SEC reasoned that, since the Nasdaq Stock Market is now a national securities exchange, that language is redundant. See Securities Exchange Act Rel. No. 90610 (Dec. 9, 2020), 86 Fed. Reg. 18596, 18623 (Apr. 9, 2021). Nevertheless, as an historical matter, the SEC contemplated the NASD having two protected quotations.

¹¹ Rule 600(b)(88) of Regulation NMS.

quotations in a security, but does not execute orders against such quotations or present orders to members for execution.” When adopting Regulation NMS, the SEC noted that “this definition currently encompasses only the NASD’s ADF,”¹² but the definition clearly contemplated exchanges operating DOFs. Given that the purpose of a DOF was to provide a method for publicly displaying quotations, the concept of an “SRO display-only facility” “operated by or on behalf of a national securities exchange” would not be viable without a protected quote separate and apart from the protected quote of the exchange’s market.

4. Alternative Approaches

LTSE believes that the implementation of the LTSE DOF with the proposed exemptive relief is the most viable approach for encouraging greater displayed liquidity in the public markets for NMS stocks. Other approaches would have significant drawbacks, whether technical, cost-related or otherwise. For example, an alternative approach would be to register another exchange in the LTSE family. By doing so, the new exchange could offer its members the opportunity to participate in the LTSE DOF and the protected quotation of the LTSE DOF would be the one protected quotation of the new exchange. Such an approach, however, would impose substantial – and potentially prohibitive – costs to implement the proposal without any additional regulatory or commercial benefit.¹³ In contrast, the proposal to offer the LTSE DOF on the existing registered exchange would avoid the artificial process of registering an entirely new exchange, while permitting effective oversight of the DOF as a facility of the LTSE by the LTSE and the Commission.¹⁴

¹² Reg NMS Adopting Release at 37549.

¹³ Such costs would not be borne solely by LTSE. For example, the Commission would be required to review and approve another Form 1 to register a new national securities exchange as well as amendments to all the NMS plans for which the national securities exchange would be a required participant.

¹⁴ Another alternative approach would be to provide an order delivery functionality. With such a functionality, when an order arrives at the exchange seeking to execute against an ATS order that is displayed on the exchange, the exchange would “deliver” the contra-side order to the ATS for execution. Such an approach may raise issues related to the integration of the exchange and the ATSs.

D. Request for Comment

As discussed above, although the definition of a DOF in Regulation NMS contemplates that national securities exchanges may operate such facilities, LTSE recognizes that an exchange has not offered a DOF to date, and, as a result, the proposal to request an exemption to permit LTSE to provide two protected quotations is novel. Therefore, LTSE would support a determination by the Commission to seek public comment on all aspects of the proposed generic exemption.

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Thank you for your attention to this matter. Please contact me at (202) 580-5752 if you have any questions or comments.

Respectfully submitted,

Gary Goldsholle

Gary L. Goldsholle
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Long-Term Stock Exchange, Inc.

cc: The Hon. Gary Gensler, Chair
The Hon. Allison Herren Lee, Commissioner
The Hon. Hester M. Peirce, Commissioner
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