

order granted pursuant to the Application. In addition, each Subadvised Fund will hold itself out to the public as employing the multi-manager structure described in the Application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets, and subject to review and oversight of the Board, will (i) set the Subadvised Fund's overall investment strategies, (ii) evaluate, select, and recommend Subadvisers for all or a portion of the Subadvised Fund's assets, (iii) allocate and, when appropriate, reallocate the Subadvised Fund's assets among Subadvisers, (iv) monitor and evaluate the Subadvisers' performance, and (v) implement procedures reasonably designed to ensure that Subadvisers comply with the Subadvised Fund's investment objective, policies and restrictions.

4. Subadvised Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

5. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent Legal Counsel, as defined in Rule 0-1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

7. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

8. The Board must evaluate any material conflicts that may be present in a subadvisory arrangement. Specifically, whenever a subadviser change is proposed for a Subadvised Fund ("Subadviser Change") or the Board considers an existing Subadvisory Agreement as part of its annual review process ("Subadviser Review"):

(a) the Adviser will provide the Board, to the extent not already being provided pursuant to section 15(c) of

the Act, with all relevant information concerning:

(i) Any material interest in the proposed new Subadviser, in the case of a Subadviser Change, or the Subadviser in the case of a Subadviser Review, held directly or indirectly by the Adviser or a parent or sister company of the Adviser, and any material impact the proposed Subadvisory Agreement may have on that interest;

(ii) any arrangement or understanding in which the Adviser or any parent or sister company of the Adviser is a participant that (A) may have had a material effect on the proposed Subadviser Change or Subadviser Review, or (B) may be materially affected by the proposed Subadviser Change or Subadviser Review;

(iii) any material interest in a Subadviser held directly or indirectly by an officer or Trustee of the Subadvised Fund, or an officer or board member of the Adviser (other than through a pooled investment vehicle not controlled by such person); and

(iv) any other information that may be relevant to the Board in evaluating any potential material conflicts of interest in the proposed Subadviser Change or Subadviser Review.

(b) the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the Subadviser Change or continuation after Subadviser Review is in the best interests of the Subadvised Fund and its shareholders and, based on the information provided to the Board, does not involve a conflict of interest from which the Adviser, a Subadviser, any officer or Trustee of the Subadvised Fund, or any officer or board member of the Adviser derives an inappropriate advantage.

9. Each Subadvised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

10. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

11. Any new Subadvisory Agreement or any amendment to an existing Investment Advisory Agreement or Subadvisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Subadvised Fund will be submitted to the Subadvised Fund's shareholders for approval.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-19289 Filed 9-7-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92847; File No. SR-LTSE-2021-05]

### Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate LTSE Rule 11.420 (Order Audit Trail System ("OATS") Requirements)

September 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 30, 2021, Long-Term Stock Exchange, Inc. ("LTSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

LTSE proposes to eliminate LTSE Rule 11.420 (Order Audit Trail System ("OATS") Requirements) to reflect that as of September 1, 2021, the Financial Industry Regulatory Authority, Inc. ("FINRA") will have retired OATS, and Industry Members will be effectively reporting to the consolidated audit trail ("CAT") adopted pursuant to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>3</sup> LTSE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein, or in LTSE CAT Compliance Rules (LTSE Rule Series 11.600) or in the CAT NMS Plan.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

LTSE is filing with the Commission a proposed rule change to eliminate LTSE Rule 11.420 to reflect that as of September 1, 2021, FINRA will have retired OATS, and Industry Members will be effectively reporting to the CAT adopted pursuant to the CAT NMS Plan.

#### I Background

LTSE, FINRA, and the other national securities exchanges (collectively, the "Participants")<sup>6</sup> filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>7</sup> and Rule 608 of Regulation NMS thereunder,<sup>8</sup> the CAT NMS Plan.<sup>9</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.<sup>10</sup> The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>11</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>12</sup> LTSE Rule Series 11.600 implements provisions of the CAT NMS Plan that are applicable to LTSE Members.<sup>13</sup>

<sup>6</sup> For a complete list of Participants, see Exhibit A to the Limited Liability Company Agreement of Consolidated Audit Trail, LLC, available at [www.catnmsplan.com/sites/default/files/2020-07/LLC-Agreement-of-Consolidated-Audit-Trail-LLC-as-of-7.24.20.pdf](http://www.catnmsplan.com/sites/default/files/2020-07/LLC-Agreement-of-Consolidated-Audit-Trail-LLC-as-of-7.24.20.pdf).

<sup>7</sup> 15 U.S.C. 78k-1.

<sup>8</sup> 17 CFR 242.608.

<sup>9</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>10</sup> 17 CFR 242.613.

<sup>11</sup> See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>12</sup> See Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016).

<sup>13</sup> See LTSE Rule 1.160(w).

The CAT NMS Plan is intended to create, implement, and maintain a consolidated audit trail that will capture in a single consolidated data source customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution.<sup>14</sup> Among other things, the CAT NMS Plan, as modified by the Commission, requires each Participant to "file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC's approval of the CAT NMS Plan."<sup>15</sup> The Plan notes that "the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability."<sup>16</sup> Specifically, the Plan requires the rule filing to discuss the following:

- Specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired;
- whether the availability of certain data from Small Industry Members<sup>17</sup> two years after the Effective Date would

<sup>14</sup> See, e.g., Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45723 (August 1, 2012).

<sup>15</sup> See CAT NMS Plan, Appendix C, Section C.9. LTSE notes that the current filing addresses only the elimination of the OATS rule. Any amendments to the Electronic Blue Sheets rules (LTSE Rule 8.220) would be subject to a separate rule filing made in conjunction with SEC rulemaking to amend Rule 17a-25 under the Exchange Act. 17 CFR 240.17a-25.

<sup>16</sup> See CAT NMS Plan, Appendix C, Section C.9.

<sup>17</sup> "Small Industry Member" is defined in LTSE Rule 11.610(pp) as an Industry Member that qualifies as a small broker-dealer as defined in Rule 0-10(c) of the Exchange Act. On April 20, 2020, the Commission granted exemptive relief from certain provisions of the CAT NMS Plan related to broker-dealers that do not qualify as Small Industry Members solely because such broker-dealers satisfy Rule 0-10(i)(2) under the Exchange Act in that they introduce transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations (referred to as "Introducing Industry Members"). Specifically, the Commission provided exemptive relief from requiring Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Industry Members other than Small Industry Members ("Large Industry Members"). provided that the Participants require such Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Small Industry Members. See Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020) (Order Granting Limited Exemptive Relief Related to Certain Introducing Brokers From the Requirements of the CAT NMS Plan) (the "Introducing Brokers Exemptive Order"). As used herein, the term "Small Industry Member" includes Introducing Industry Members in accordance with the Introducing Brokers Exemptive Order.

facilitate a more expeditious retirement of duplicative systems; and

- whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.<sup>18</sup>

On November 30, 2020, the Commission approved a FINRA rule filing proposing to eliminate the FINRA OATS system once FINRA members are effectively reporting to the CAT and the CAT's accuracy and reliability meet certain standards.<sup>19</sup> Specifically, FINRA proposed that before OATS could be retired, the CAT generally must achieve a sustained error rate for Industry Member reporting in five categories for a period of at least 180 days<sup>20</sup> of 5% or lower on a pre-correction basis, and 2% or lower on a post-correction basis (measured at T+5). In addition to the maximum error rates and matching thresholds (hereafter the "threshold requirements"), FINRA's use of CAT Data must confirm that (i) there are no material issues that have not been corrected, (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage in the initial phase of reporting ("Phase 2a") of Industry Member Data.

In the OATS Retirement Plan Order, the Commission approved FINRA's proposal for how it would measure the CAT Data's accuracy and reliability. Specifically, the Commission endorsed FINRA's proposal that FINRA's review of CAT Data and error rates would be based on data and linkages in Phase 2a, which replicate the data in OATS today and thus are most relevant for OATS retirement purposes. Phase 2a Data includes all events and scenarios covered by OATS and applies only to equities. And FINRA would not consider options order events or Phase 2c data and validations, which are not

<sup>18</sup> See *supra* note 16.

<sup>19</sup> See Securities Exchange Act Release No. 90535 (November 30, 2020), 85 FR 78395 (December 4, 2020) (SR-FINRA-2020-024) ("OATS Retirement Plan Order").

<sup>20</sup> As set forth in the OATS Retirement Plan Order, the 180 day "applicable period" ran from October 26, 2020 to April 26, 2021. October 26, 2020 was the date that Industry Members were required to begin correcting all errors for inter-firm linkages and exchange/TFR/ORF match validations.

in OATS today, for purposes of OATS retirement.<sup>21</sup>

On June 17, 2021, FINRA made an immediately effective filing setting forth the basis for its determination that the accuracy and reliability of the CAT met the standards approved by the Commission in the OATS Retirement Plan Order and designating September 1, 2021 as the date on which FINRA would retire OATS.<sup>22</sup> Specifically, FINRA determined that the CAT met the threshold requirements endorsed by the Commission in the OATS Retirement Plan Order for Industry Member reporting in each of the following categories:

#### A. Rejection Rates and Data Validations

As described in the OATS Retirement Filing, the Plan Processor must perform certain basic data validations, and if a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted.<sup>23</sup> FINRA determined that for the applicable period, aggregate rejection rates across all Industry Member Reporters were 0.03% pre-correction and 0.01% post-correction, which far exceeds the threshold requirements of a 5% or lower pre-correction error rate and a 2% or lower post-correction error rate.

#### B. Intra-Firm Linkages

As described in the OATS Retirement Filing, the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order. At a minimum, this requirement includes the creation of an order lifecycle between all order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (e.g., an internal ATS). FINRA determined that for the applicable period, the intra-firm linkage accuracy rates across all Industry Member Reporters were 99.07% pre-correction and 99.99% post-correction, which far exceeds the threshold requirements of 95% or higher pre-correction and 98% or higher post-correction (in other words, the intra-firm linkages accuracy far exceeds the threshold requirement that there be less

than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

#### C. Inter-Firm Linkages

As described in the OATS Retirement Filing, the Plan Processor must be able to create the lifecycle between orders routed between broker-dealers. FINRA determined that for the applicable period, the intra-firm linkage accuracy rates across all Industry Member Reporters were 99.08% pre-correction and 99.84% post-correction, which far exceed the threshold requirements of 95% or higher pre-correction and 98% or higher post-correction (in other words, the inter-firm linkages accuracy far exceeds the threshold requirement that there be less than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

#### D. Order Linkage Rates

As described in the OATS Retirement Filing, in addition to creating linkages within and between broker-dealers, the Plan Processor must be able to create lifecycles to link various pieces of related orders. For example, the Plan requires linkages of order information to create an order lifecycle from origination or receipt to cancellation or execution. This category essentially combines all of the order-related linkages to capture an overall snapshot of order linkages in the CAT.<sup>24</sup> FINRA determined that for the applicable period, the order-related linkage accuracy rates across all Industry Member Reporters were 99.66% pre-correction and 99.93% post-correction, which far exceed the threshold requirements of 95% or higher pre-correction and 98% or higher post-correction (in other words, the order linkages accuracy far exceeds the threshold requirement that there be less than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

#### E. Exchange and TRF/ORF Match Rates

As described in the OATS Retirement Filing, an order lifecycle must be created to link orders routed from broker-dealers to exchanges and executed orders and trade reports. FINRA determined that for the applicable period, the match rate across all equity exchanges for orders routed from Industry Members to an exchange was 99.51% pre-correction and 99.87% post-correction. This match rate far exceeds the threshold requirements of

95% or higher pre-correction and 98% or higher post-correction (in other words, the match rate accuracy far exceeds the threshold requirement that there be less than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

Based upon the accuracy and reliability of the above five categories of CAT Data, FINRA determined that the CAT Data met the accuracy and reliability standards required for OATS retirement.<sup>25</sup>

#### II. FINRA's Use of CAT Data

Additionally, the OATS Retirement Plan Order set forth that before retiring OATS, FINRA's use of CAT data must confirm that (i) there are no material issues that have not been corrected (e.g., delays in the processing of data, issues with query functions, etc.); (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations<sup>26</sup>; and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data.

As set forth in FINRA's OATS Retirement Filing, by September 1, 2021, FINRA will be ready to retire its use of OATS data for cross-market surveillance, and replace it with a newly created surveillance data mart, the Pattern Optimized Datamart ("POD"), which incorporates equities (and options) data submitted by both Participants such as LTSE and Industry Members. LTSE has been reporting via the CAT technical specifications since its launch on August 28, 2020. Full Participant equities reporting and linkage validations commenced on June 1, 2021.<sup>27</sup> Successful completion of the transition to the CAT specification for Participants was a prerequisite for FINRA to retire the OATS-based cross market surveillance patterns and leverage CAT Data and linkages in POD for its surveillance patterns. FINRA has completed all planned activities on schedule, including substantially completing the process of integrating

<sup>25</sup> See *supra* note 22.

<sup>26</sup> FINRA conducts surveillance on behalf of LTSE pursuant to the Regulatory Service Agreement entered into by LTSE and FINRA ("RSA"). Therefore, any references in this rule filing to FINRA surveillance include FINRA's use of either OATS or CAT Data in furtherance of the regulatory services it provides on behalf of LTSE.

<sup>27</sup> For example, according to the CAT Reporting Technical Specification for Participants (version 4.0.0-r4 dated April 20, 2021), additional linkage error feedback for off-exchange trade reports was effective as of June 1, 2021. The Technical Specifications can be found on the CAT NMS Plan website at [www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-Reporting-Technical-Specifications-for-Participants-4.0.0-r4.pdf](http://www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-Reporting-Technical-Specifications-for-Participants-4.0.0-r4.pdf).

<sup>21</sup> See *supra* note 19.

<sup>22</sup> See Securities Exchange Act Release No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021) (SR-FINRA-2021-017) ("OATS Retirement Filing").

<sup>23</sup> Appendix D of the CAT NMS Plan, Section 7.2, for example, requires that certain file validations (e.g., file transmission and receipt are in the correct formats, confirmation of a valid SRO-Assigned Market Participant Identifier, etc.), and syntax and context checks (e.g., format checks, data type checks, consistency checks, etc.) be performed on all submitted records.

<sup>24</sup> See Letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 29, 2020.

CAT Data into POD and successfully running large amounts of production CAT Data for the month of May through POD.<sup>28</sup> FINRA anticipates completing additional activities before the proposed OATS retirement date of September 1, 2021, including planned user acceptance testing.<sup>29</sup>

Additionally, FINRA has confirmed that all of the data required to support the transition from OATS to CAT is available in CAT.<sup>30</sup> Specifically, FINRA, supported by the Participants, conducted a mapping of all OATS data to CAT data, and then completed a “gap analysis” to address any issues with the field-level mapping of OATS to CAT data. Furthermore, LTSE, along with other Participants, has had a very high compliance rate in reporting CAT Data using the CAT specifications (both in the testing and production environments).<sup>31</sup> Reviewing the Participant submitted CAT Data and matching it with Industry Member data, FINRA determined that the data linkages in CAT are “comparable to the linkages between RSA exchange data and OATS data” currently used by FINRA.<sup>32</sup> Accordingly, the CAT NMS Plan Operating Committee approved the cutover from the RSA specification to the CAT specification as the official source of Participant data as of June 1, 2021, and today, all Industry Member and Participant equities data reported via the CAT specification is linked in the CAT production environment.

Thus, FINRA will use OATS data for surveillance patterns run through the end of the second quarter of 2021 and has already begun using CAT Data for its surveillance patterns for review periods beginning in the third quarter of 2021.<sup>33</sup> As detailed in the OATS Retirement Filing, FINRA will continue to conduct regular reviews to ensure confidence in the completeness and accuracy of Industry Member reporting, along with the ability to remediate any issues in a timely manner.<sup>34</sup>

### III. OATS May Be Retired in Light of the Accuracy and Reliability of the CAT Data

LTSE, like FINRA, believes that the three additional standards set forth in the OATS Retirement Order for retiring OATS have been satisfied. With respect to the first factor, LTSE, like FINRA, does not believe that there are any material issues that have not been corrected (or could not be corrected in the course of operation of CAT, as approved by the Operating Committee) that would impact FINRA’s ability to incorporate and use CAT Data in FINRA’s surveillance program, which it conducts on behalf of LTSE pursuant to the RSA. For example, the Plan requires that raw unprocessed data that has been ingested by the Plan Processor must be available to Participant regulatory staff and the SEC prior to 12:00 p.m. Eastern Time on T+1, and access to all iterations of processed data must be available to Participant regulatory staff and the SEC between 12:00 p.m. Eastern Time on T+1 and T+5.<sup>35</sup> The Plan Processor also must ensure that regulators have access to corrected and linked order data by 8:00 a.m. Eastern Time on T+5.<sup>36</sup> Additionally, after ingestion by the Central Repository, the raw unprocessed data must be transformed into a format appropriate for data querying and regulatory output.<sup>37</sup> The user-defined direct queries and bulk extracts must provide authorized users with the ability to retrieve CAT Data via a query tool or language that allows users to query all available attributes and data sources.<sup>38</sup> FINRA’s use of the CAT Data has not uncovered any processing delays or other material issues impacting the availability of, and FINRA’s access to, the data.<sup>39</sup>

With respect to the second factor, LTSE, like FINRA, believes that the CAT includes all data necessary for FINRA to meet its surveillance obligations after the retirement of OATS. FINRA must ensure that the CAT, as the single source of order and trade data, can enable FINRA to conduct accurate and effective market surveillance in accordance with its regulatory obligations. As noted above, Phase 2a Data includes all events and scenarios covered by OATS and is the most relevant for OATS retirement purposes. FINRA’s testing, analysis and use of the CAT Data (including integration into

POD), as described above, has confirmed that the CAT includes all data necessary for FINRA to meet its surveillance obligations and that CAT is a reliable substitute for OATS. In addition, based on its qualitative data reviews, FINRA has concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA’s surveillance program.

With respect to the third factor, LTSE, like FINRA, believes that the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data. As detailed in the Implementation Plan and Quarterly Progress Reports submitted by the Plan Participants, the Plan Processor has met its targeted completion dates for the milestones for Phase 2a, including, for example, production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters) on June 22, 2020; Production Go-Live for Equities 2a Intrafirm Linkage validations on July 27, 2020; and production go-live for firm-to-firm linkage validations for equities (Large Industry Members and Small OATS Reporters) and exchange and TRF/ORF linkage validations for equities (Large Industry Members and Small OATS Reporters) on October 26, 2020.<sup>40</sup>

Based on the foregoing, LTSE agrees with FINRA’s determination that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Order for purposes of eliminating OATS. FINRA has determined to retire OATS effective September 1, 2021.<sup>41</sup> Firms must continue to report to OATS all order events that occur on or prior to August 31, 2021. Reports submitted to OATS for order events that occur after August 31, 2021 will be rejected. In other words, August 31, 2021 will be the last “OATS Business Day,” as defined under FINRA Rule 7450(b)(3), for which OATS will accept order events and perform routine processing (including incorporation of corrections and repairs of rejections) occurring within the normal OATS timeframe for such activities. OATS will continue to accept reports for order events that occur on or prior to August 31, 2021 (including, but not limited to, late and corrected reports for such order events) through September 16, 2021. Firms must ensure that their OATS

<sup>28</sup> See *supra* note 22.

<sup>29</sup> As noted in the FINRA OATS Retirement Filing, user acceptance testing is the final stage of any software development lifecycle and enables actual users to test the system to confirm it is able to carry out the required tasks it was designed to address in real-world situations.

<sup>30</sup> See *supra* note 22.

<sup>31</sup> For example, for the month of July 2021, LTSE’s compliance error rate for CAT Data reporting was 1.7% (*i.e.*, 98.3% of records were successfully reported). However, this monthly average error rate was impacted by a single day; for all other days in that month, LTSE’s compliance error rate ranged between 0.00% and 0.05%.

<sup>32</sup> See *supra* note 22.

<sup>33</sup> See *supra* note 22.

<sup>34</sup> See *supra* note 22.

<sup>35</sup> See CAT NMS Plan, Appendix D, Section 6.2.

<sup>36</sup> See CAT NMS Plan, Appendix C, Section A.2(a).

<sup>37</sup> See CAT NMS Plan, Appendix C, Section A.1(b).

<sup>38</sup> See CAT NMS Plan, Section 6.10(c).

<sup>39</sup> See *supra* note 20.

<sup>40</sup> The Implementation Plan and Quarterly Progress Reports are available at [www.catnmsplan.com/implementation-plan](http://www.catnmsplan.com/implementation-plan).

<sup>41</sup> See FINRA Regulatory Notice 21–21 (June 2021).

reporting is accurate and complete for all order events that occur on or prior to August 31, 2021. LTSE Rule 11.420, like the FINRA OATS Rules, will be deleted from the LTSE rulebook effective September 1, 2021.<sup>42</sup>

In light of the foregoing, LTSE, like FINRA, believes that retiring OATS as of September 1, 2021 is appropriate, particularly given the potential risks of continuing to run OATS and CAT in parallel for an additional period of time. Such potential risks may include, for example, on an industry-wide basis: (1) Processing and storage capacity issues from operating two systems (particularly in the event of extraordinary market volume); (2) cybersecurity risks from having data flow through two separate systems for a longer time period; (3) systems issues from reporting infrastructure that is near end-of-life; and (4) the expense and burden on CAT Reporters of dual reporting, particularly in the event of systems issues requiring correction and/or resubmission of data and competing resource priorities between OATS and CAT reporting and repair activities.

LTSE has filed the proposed rule change for immediate effectiveness and is seeking a waiver of the 30 day operative delay to allow its OATS rules to be retired concurrent with the September 1, 2021 retirement of FINRA's OATS Rules. LTSE will also announce the retirement of OATS via a trader alert to its Members.

## 2. Statutory Basis

LTSE believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>43</sup> which require, among other things, that LTSE's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. LTSE believes that the proposed retirement of LTSE Rule 11.420 fulfills the obligation in the CAT NMS Plan for LTSE to submit a proposed rule change to eliminate or modify duplicative rules, and that the CAT NMS Plan has achieved the accuracy and reliability standards required by the Commission in the OATS Retirement Order.

Additionally, as discussed in the Purpose section, LTSE believes that the use of CAT Data, whether by LTSE directly, or by FINRA pursuant to the RSA, will continue to allow for accurate

and effective surveillance of market activity on LTSE. Therefore, LTSE will continue to be able to fulfill its statutory obligation to protect investors and the public interest after the retirement of OATS.

## B. Self-Regulatory Organization's Statement on Burden on Competition

LTSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. LTSE notes that the proposed rule change implements provisions of the CAT NMS Plan, facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. LTSE also notes that the proposed rule change will apply equally to all firms that trade NMS Securities. In addition, all national securities exchanges and FINRA are proposing substantially similar rule filings. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

Furthermore, LTSE notes that FINRA undertook an economic impact assessment of the potential costs and benefits associated with OATS retirement and determined that CAT meets or exceeds the OATS standards.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>44</sup> and Rule 19b-4(f)(6) thereunder.<sup>45</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

of the Act<sup>46</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>47</sup>

The proposed rule change would not significantly affect the protection of investors or the public interest because it seeks to align LTSE's retirement of its OATS rule with FINRA's September 1, 2021 retirement of the OATS system itself. Thus, this rule change would facilitate the retirement of certain existing, duplicative, regulatory systems. Additionally, all national securities exchanges that currently have OATS rules are proposing substantially similar regulatory filings retiring their respective OATS rules. Therefore, this is not a competitive rule filing, and it does not impose a burden on competition. Accordingly, the Exchange has filed this rule change under Section 19(b)(3)(A) of the Act<sup>48</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>49</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>50</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>51</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by September 1, 2021, the first day in which FINRA will no longer accept OATS data.<sup>52</sup> As discussed above, LTSE believes that it is appropriate for FINRA to retire OATS effective September 1, 2021. LTSE states that the use of CAT Data, whether by LTSE or by FINRA pursuant to LTSE's RSA with FINRA, will allow for accurate and effective surveillance of market activity on LTSE. In addition, August 31, 2021, will be the last "OATS Business Day," as defined under FINRA Rule 7450(b)(3), for which OATS will accept order events and perform routine processing, and reports submitted to OATS for order events that occur after August 31, 2021, will be rejected. The Commission believes that it is

<sup>46</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>47</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>48</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>49</sup> 17 CFR 240.19b-4.

<sup>50</sup> 17 CFR 240.19b-4(f)(6).

<sup>51</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>52</sup> In the unlikely event that FINRA determines it is unable to retire OATS effective September 1, 2021, LTSE will delay the retirement of LTSE Rule 11.420 pending the actual retirement of FINRA OATS.

<sup>42</sup> In the unlikely event that FINRA determines it is unable to retire OATS effective September 1, 2021, LTSE will delay the retirement of LTSE Rule 11.420 pending the actual retirement of FINRA OATS.

<sup>43</sup> 15 U.S.C. 78f(b)(5).

<sup>44</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>45</sup> 17 CFR 240.19b-4(f)(6).

consistent with the protection of investors and the public interest for LTSE to delete its OATS reporting rules at the same time that FINRA retires OATS. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative on September 1, 2021.<sup>53</sup>

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-LTSE-2021-05 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-LTSE-2021-05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of LTSE and on its internet website at <https://longtermstockexchange.com/>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-LTSE-2021-05, and should be submitted on or before September 29, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>54</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92839; File No. SR-NYSE-2021-42]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the Requirements of Section 102.06 of the NYSE Listed Company Manual To Allow an Acquisition Company To Contribute a Portion of Its Trust Account to a New Acquisition Company and Spin-Off the New Acquisition Company to Its Shareholders

September 1, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 23, 2021, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the requirements of Section 102.06 of the NYSE Listed Company Manual ("Manual") for the listing of acquisition companies and the provisions of Section 802.01B with respect to the qualification of an acquisition company after its business combination. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to modify Section 102.06 of the Manual to allow an acquisition company listed under that rule to contribute a portion of the amount held in its trust account to a trust account of a new AC and spin off the new AC to its shareholders in certain situations where the new AC will be subject to all of the same requirements as the original AC.

In 2008, the Exchange adopted a rule to allow companies that have no specific business plan or that have indicated their business plan is to consummate the acquisition of one or more operating businesses or assets (a "Business Combination") to list if they meet all applicable initial listing requirements, as well as additional conditions designed to provide investor protections to address specific concerns about the structure of such companies ("Acquisition Companies" or "ACs").<sup>4</sup>

<sup>53</sup> For purposed only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>54</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR-NYSE-2008-17).