

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97123; File No. SR–LTSE–2023–01]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Establish Listing Standards Related To Recovery of Erroneously Awarded Incentive-Based Executive Compensation

March 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on February 27, 2023, Long-Term Stock Exchange, Inc. (“LTSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change. On March 9, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

LTSE is filing with the Commission a proposed rule change as modified by Amendment No. 1³ to adopt Listing Standards for the Recovery of Erroneously Awarded Compensation, as required by Rule 10D–1 of the Act.⁴ The text of the proposed rule change is available at the Exchange’s website, at <https://longtermstockexchange.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 Exchange 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 Exchange 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 on the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing this amendment to SR–LTSE–2023–01 (“Amendment 1”) in order to (i) clarify the purpose and rationale of the proposed rule change; and (ii) make technical changes to improve the structure and clarity of the proposed rules. This Amendment 1 supersedes and replaces the initial rule proposal in its entirety (the “Initial Proposal”).

LTSE filed the Initial Proposal with the Commission on February 27, 2023 pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),⁵ and Rule 19b–4⁶ thereunder, proposing rule changes to establish listing standards for the recovery of erroneously awarded executive compensation as required by Rule 10D–1 of the Act.⁷

The Exchange is proposing amendments to Chapter 14 of its rules (LTSE Listing Rules) to establish listing standards for the recovery of erroneously awarded executive compensation as required by Rule 10D–1 and to address situations where a listed company has not complied with Rule 10D–1 and the Exchange’s listing standards established pursuant thereto.

The Exchange proposes to amend Rule 14.203, Prerequisites for Applying to List on the Exchange, by adding new paragraph (j), which will require that all Companies listing on LTSE must, as required by Rule 10D–1, comply with the requirements of proposed Rule 14.207(f), Recovery of Erroneously Awarded Compensation to Executive Officers.

The Exchange is further proposing to amend LTSE Rules 14.207, Obligations for Companies Listed on the Exchange, paragraph (f), to establish “Listing Standards for the Recovery of Erroneously Awarded Compensation.” The current text of paragraph (f) of Rule 14.207 will be repositioned into a new paragraph (g).

On October 26, 2022, the Commission adopted a new rule and rule

amendments⁸ to implement Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd Frank Act”),⁹ which added Section 10D to the Act. This final Rule 10D–1 adopted by the Commission directs national securities exchanges and associations that list securities to establish listing standards that require each issuer to adopt, comply with, and disclose a written policy providing for the reasonably prompt recovery, in the event of required accounting restatement, of incentive-based compensation received by current or former executive officers during the three fiscal years preceding the date on which the issuer is required to prepare an accounting restatement to correct a material error. As required by Rule 10D–1 and proposed Rule 14.207(f) titled “Recovery of Erroneously Awarded Compensation to Executive Officers,” any Company listed on LTSE must adopt a compensation recovery policy, comply with that policy, and provide the required disclosures.

Additionally, as explained in the Rule 10D–1 adopting release¹⁰ (the “Adopting Release”), each listed issuer is required to file its written recovery policies as exhibits to its annual report; indicate, by check boxes on the annual reports, whether the financial statements included in the filing contain a correction of an error in previously-issued financial statements and whether any of the reported error corrections constitute restatements that required a recovery analysis under the issuer’s recovery policies; and finally, to disclose any actions taken through the application of the recovery policies.

Rule 10D–1 requires that issuers recover reasonably promptly the amount of erroneously-awarded executive compensation. Compliance by an issuer with this obligation will be reviewed in the context of each accounting restatement prepared by the issuer, and will include the means used to seek recovery and whether such means are appropriate based on the discrete circumstances of each executive officer who is determined to be subject to recovery of erroneously awarded compensation.

Rule 10D–1 became effective on January 27, 2023; national securities exchanges and national securities associations that list securities were

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ This Amendment No. 1 to the rule filing SR–LTSE–2023–01 replaces SR–LTSE–2023–01 as originally filed on February 27, 2023 and supersedes that filing in its entirety.

⁴ 17 CFR 240–10D–1.

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240–19b–4.

⁷ 17 CFR 240–10D–1.

⁸ See, Release Nos. 33–11126; 34–96159; IC–34732; File No. S–7–12–15; 87 FR 73076 (November 28, 2022).

⁹ 2 Public Law No. 111–203, 124 Stat. 1900 (2010).

¹⁰ Securities Exchange Act Release No. 96159 (October 26, 2022), 87 FR 73076 (November 28, 2022).

required to file proposed listing standards no later than February 27, 2023 and such listing standards must be effective no later than November 28, 2023. Issuers subject to the Exchange's listing standards will have 60 days following the effective date of such standards to adopt a recovery policy.

As required by Rule 10D-1 and proposed Rule 14.207(f), any Company listed on LTSE must adopt a compensation recovery policy, comply with that policy, and provide the required compensation recovery policy disclosures.

The Exchange is proposing amendments to Chapter 14 of its rules (LTSE Listing Rules) to establish listing standards for the recovery of erroneously awarded executive compensation as required by Rule 10D-1.

The Exchange proposes to amend Rule 14.203, Prerequisites for Applying to List on the Exchange, by adding new paragraph (j), which will require that all Companies listing on LTSE must, as required by Exchange Act Rule 10D-1, comply with the requirements of Rule 14.207(f) (Recovery of Erroneously Awarded Compensation to Executive Officers).

New Definitions

The Exchange is proposing to adopt the specific definitions of certain terms as contained in Rule 10D-1. These new definitions are being proposed solely for purposes of Rule 14.207(f). In new subparagraph (A) of Rule 14.207(f)(1), the Exchange defines "Executive Officer" as the Company's ¹¹ president, principal financial officer, principal accounting officer (or the controller in the event there is no principal accounting officer), and vice-president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Executive officers of the Company's parent(s) or subsidiaries are deemed executive officers of the Company if they perform such policy making functions for the Company. In addition, when the Company is a limited partnership, officers or employees of the general

partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the Company is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of this Rule would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

Proposed subparagraph (B) of Rule 14.207(f)(1) defines "Financial Reporting Measures" as those that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

In proposed subparagraph (C) of Rule 14.207(f)(1), the Exchange defines "Incentive-based Compensation" as any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure. Finally, proposed subparagraph (D) of Rule 14.207(f)(1) provides that the term "Received" with respect to incentive-based compensation as meaning that such compensation is deemed received in the Company's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period. The provision is intended to provide clarification and avoid doubt when determining when incentive based compensation that is subject to the rule was received.

Requirement To Adopt, Implement and Disclose a Recovery Policy for Incentive-Based Executive Compensation

Proposed Rule 14.207(f)(2) requires that every Company that lists its securities on the Exchange must, no later than 60 days of the effective date of this rule, which is the date that the Commission approves this rule filing SR-LTSE-2023-01, adopt and comply with a written policy requiring such issuer to recover reasonably promptly the amount of erroneously awarded incentive-based compensation to any

executive officer in the event that the Company is required to prepare an accounting restatement due to material non-compliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct a material error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

This provision is intended to align with the requirements of Rule 10D-1 and embed in the Exchange's listing rules the requirement to establish and enforce a written recovery policy as a requirement for listing on LTSE.

In proposed Rule 14.207(f)(2)(B), the Exchange requires that every Company listed on the Exchange disclose its written recovery policy as part of its reporting obligations to the Commission, as an exhibit to its Annual Report, and to the Exchange. Companies applying for initial listing must include its written recovery policy as part of its listing application. The Exchange will not act on any new listing application unless the recovery policy is included with the initial listing application. Proposed Rule 14.203(j), as discussed above, also notes as part of the prerequisites for applying to list on the Exchange, as required by Rule 10D-1, any Company listing on the Exchange must comply with proposed rule 14.207(f).

In proposed Rule 14.207(f)(3), Application of the Recovery Policy to Executive Officers, the Exchange states that the recovery policy shall apply to all incentive-based compensation received by a person: (A) after beginning service as an executive officer of the Company; (B) who served as an executive officer at any time during the performance period for that incentive-based compensation; (C) while the Company had a class of securities listed on a national securities exchange or a national securities association; and (D), during the three completed fiscal years immediately preceding the date that the Company is required to prepare an accounting restatement as described in proposed Rule 14.207(f). In addition to the last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the Company's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year

¹¹ The Exchange notes that, throughout the proposed rule text, it uses the term "Company" rather than "issuer" to apply consistent terminology that is used throughout the Exchange's Listing Rules. Rule 14.002(a)(5) defines "Company" to mean the issuer of a security listed or applying to list on the Exchange. For purposes of the Exchange's listing rules, the term "Company" includes an issuer that is not incorporated, such as, for example, a limited partnership.

that comprises a period of nine to 12 months would be deemed a completed fiscal year. A Company's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

For purposes of determining the relevant recovery period, the Exchange proposes in Rule 14.207(f)(4) that the date that a Company is required to prepare an accounting restatement as described in paragraph (f) of the Rule is the earlier to occur of: (A) the date the Company's board of directors, a committee of the board of directors, or the officer or officers of the Company authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an accounting restatement as described in paragraph (f) of this Rule; or (B) the date a court, regulator, or other legally authorized body directs the Company to prepare an accounting restatement as described in paragraph (f) of this Rule.

Determining Amount of Incentive-Based Compensation Subject to the Company's Recovery Policy

Proposed Rule 14.207(f)(5)(A) states that the amount of incentive-based compensation that must be subject to the Company's recovery policy ("erroneously awarded compensation") is the amount of incentive-based compensation received that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. Proposed subparagraph (B) states that, for incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement: (i) the amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and (ii) the Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange. These provisions are intended to address and clarify how erroneously awarded compensation calculations will be treated when it involves factors not readily obtained through an analysis of the accounting restatement.

Rule 10D-1 requires that a listed Company recover the amount of

erroneously-awarded incentive-based compensation reasonably promptly¹² but does not specify the time by which the Company must complete the recovery of excess incentive-based compensation. LTSE will determine whether the steps that a Company is taking constitutes compliance with its compensation recovery policy. The Company's obligation to recover erroneously-awarded incentive based compensation reasonably promptly will be assessed on a holistic basis with respect to each such accounting restatement prepared by the Company. In evaluating whether the Company is recovering erroneously-awarded executive compensation reasonably promptly, the Exchange will consider whether the Company is pursuing the appropriate balance of cost and speed in determining the appropriate means to seek recovery, and whether the Company is securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.

Exceptions to Requirement To Recover Erroneously Awarded Compensation

Proposed Rule 14.207(f)(6), Exceptions to Requirement to Recover Erroneously Awarded Compensation, allows for certain exceptions to the application of the recovery policy. Specifically, Companies must recover erroneously awarded compensation in compliance with its recovery policy except to the extent that the conditions described subparagraphs (A), (B), or (C) of proposed Rule 14.207(f)(6) are met and the Company's Compensation Committee, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable in consideration of those conditions.

Under subparagraph (A) of proposed Rule 14.207(f)(6), the direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the Company must make a reasonable

¹² The Commission stated that it: "recognize(s) that what is reasonable may depend on the additional cost incident to the recovery efforts. [The Commission] expects[s] that issuers and their directors and officers, in the exercise of their fiduciary duty to safeguard the assets of the issuer (including the time value of any potentially recoverable compensation), will pursue the most appropriate balance of cost and speed in determining the appropriate means to seek recovery." See, Adopting Release at 73104.

attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to the exchange or association. Under subparagraph (B), recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the Company must obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation, and must provide such opinion to the Exchange. Under subparagraph (C), recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

In proposed Rule 14.207(f)(7), Indemnification Of Executive Officers by the Company Prohibited, the Exchange makes clear that a Company is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation. This provision is intended to assure that executive officers who otherwise would be subject to the recovery rule do not avoid a financial consequence by having the Company indemnify them. Absent this provision, the recovery rule would lose substantial impact and would not be as effective in influencing executive management actions.

Proposed Rule 14.207(f)(8) reinforces the disclosure requirements and provides that Companies are required to file all disclosures with respect to its Recovery Policy in accordance with the requirements of the Federal securities laws, applicable Commission filings, and the Rules of the Exchange.

The Exchange further proposes certain general exemptions in Rule 14.207(f)(9): that the requirements of Rule 14.207(f) shall not apply to the listing of any security issued by a unit investment trust, as defined in 15 U.S.C. 80a-4(2) and any security issued by a management company as defined in 15 U.S.C. 80(a)-4(3) that is registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8, if such management company has not awarded incentive-based compensation to any executive officer of the Company in any of the last three fiscal years, or in the case of a Company that has been listed less than three fiscal years, since the listing of the Company. These exemptions are proposed to align with

the exemptions provided in Rule 10D–1.

As provided in Rule 10D–1, LTSE proposes to require under Rule 14.207(f)(10) that each Company is required to (i) adopt a policy governing the recovery of erroneously awarded compensation as required by this rule no later 60 days following the effective date of this rule (the date of the Commission’s approval of SR–LTSE–2023–01); and (ii) provide the disclosures required by this rule and in the applicable Commission filings on or after such effective date of this rule (the date of the Commission’s approval of SR–LTSE–2023–01). Notwithstanding the look-back requirements in Rule 14.207(f), a Company is only required to apply the recovery policy to incentive-based executive compensation received after the effective date of this rule (the date of the Commission’s approval of SR–LTSE–2023–01).

As proposed, a Company will be subject to delisting by the Exchange if it does not adopt, comply with, and disclose its policy on recovery of erroneously awarded executive compensation. Any Company that has failed to meet the requirements of the Rule will not be allowed to list on LTSE or, if listed, will be subject to provisions of LTSE Rule 14.500 (Failure to Meet Listing Standards) and the procedures set forth in Rules 14.501, 14.502 and 14.503. The Exchange is proposing to amend Rule 14.501(d)(2)(A)(iii) to provide that a Company that has failed to comply with the requirements of Rule 14.207(f) is required to submit to LTSE a plan to regain compliance. The Exchange proposes to utilize its existing administrative process for addressing corporate governance deficiencies for violations of Rule 10D–1, subject to certain amendments described below. The Exchange believes that using the existing process is appropriate in that it applies a consistent process for rectifying corporate governance deficiencies to which listed Companies are already subject.

However, the Exchange is proposing amendments to Rule 14.500(b)(5), which defines a Public Reprimand Letter, and Rule 14.501, Notification of Deficiency by LTSE Regulation, to exclude a violation of Rule 10D–1 from the deficiencies in listing standards for which a Public Reprimand Letter is appropriate under Rule 14.500 and state that Public Reprimand Letters may not be issued for violations of the listing standards required by Rule 10D–1 and proposed LTSE Rule 14.207(f). A conforming amendment is proposed for Rule 14.502, Review of Staff Determination by the Listings Review

Committee. Currently, the rule text in Rule 14.502(1)(C), states that the Exchange’s Listing Review Committee may, where it deems appropriate: “issue a decision that serves as a Public Reprimand letter in cases where the Company has violated an Exchange corporate governance or notification Listing standard (other than one required by Rule 10A–3 of the Act) and the Listing Review Committee determines that delisting is an inappropriate sanction. . . .” The Exchange proposes to include Rule 10D–1 as a governance and notification listing standard that is ineligible for the disposition by a Public Reprimand Letter upon a review or a delisting proceeding by the Listings Review Committee.

The Exchange is proposing these amendments because it does not believe that issuance of a Public Reprimand Letter in situations where a listed Company has failed to meet its obligations regarding the recovery of erroneously awarded executive compensation is consistent with the provisions of Rule 10D–1.

2. Statutory Basis

The Exchange believe that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, the Exchange believes that the proposal is not designed to permit unfair discrimination between issuers or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange, for the reasons set forth below.

First, and importantly, the Exchange is proposing to adopt these rules as required under Section 10D of the Act and Rule 10D–1. The requirement that national securities exchanges that list equity securities, such as LTSE, embed the requirements of the statute and the regulation into its listing rules is intended to effectuate compliance and ensure consistency across the rules of

every exchange. The Exchange believes that these proposals protect investors and the public interest by requiring Companies, with certain exemptions, that in the event the Company is required to prepare an accounting restatement, to recover reasonably promptly erroneously awarded incentive-based compensation paid to current or former executive officers based on any misstated financial measure. These proposed amendments will also help to foster effective oversight of executive compensation and provide increased accountability and transparency to investors by not allowing executive officers to retain compensation that they were awarded erroneously. The Exchange believes that the recovery requirement will operate to provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who pursue impermissible accounting methods, which the Commission expects will further reduce such behavior.¹⁵

LTSE further believes that the proposal to provide that a Company that had failed to comply with the requirements of Rule 14.207(f) is required to submit to the Exchange a plan to regain compliance is consistent with the investor protection objectives of Section 6(b)(5) of the Act¹⁶ because the Exchange’s process for addressing such deficiencies will follow the established pattern used for similar corporate governance deficiencies, to which listed Companies are already subject and are familiar with.

The Exchange believes that its proposed rule change is fair and not unfairly discriminatory. As stated in the Adopting Release, “[t]o assure that issuers listed on different exchanges are subject to the same disclosure requirements regarding erroneously awarded compensation recovery, amendments to the Commission’s disclosure rules require all issuers listed on any exchange to file their written compensation policies as an exhibit to their annual reports. . . .”¹⁷ Additionally, because issuers listed on different exchanges will be subject to the same disclosure requirements regarding erroneously awarded compensation it alleviates any additional compliance burdens that could result, absent uniform treatment across all exchanges. The Exchange

¹⁵ See, Rule 10D–1 Adopting Release at 87 FR 73077.

¹⁶ 15 U.S.C. 78(b)(5).

¹⁷ See, 87 FR 73078.

¹³ Id.

¹⁴ 15 U.S.C. 78f(b)(5).

further believes that the proposed amendments are consistent with the protection of investors and the public interest by imparting uniformity of the exchanges' rules on erroneously awarded executive compensation, as required by Rule 10D-1.

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

The Exchange 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. In fact, as discussed in the Statutory Basis section, LTSE believes that the proposed amendments will impose no burden on competition in that every publicly traded company will be required to comply with the Rule 10D-1, and every national securities exchange that lists securities will be required to adopt essentially the same rules regarding erroneously awarded compensation as part of their original and continued listing requirements. Given these factors, the Exchange does not believe that there will be any burden on competition.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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, as modified by Amendment No. 1, 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. Please include File Number SR-LTSE-2023-01 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-2023-01. 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 the Exchange. 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-2023-01 and should be submitted on or before April 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97130; File No. SR-MEMX-2023-04]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Adopt Market Data Fees

March 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 28, 2023, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ and non-Members (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on March 1, 2023.

The text of the proposed rule change is provided in Exhibit 5.

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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

¹⁸ 17 CFR 200.30-3(a)(12).