

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104146; File No. 10-249]

## In the Matter of the Application of Texas Stock Exchange LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission

September 30, 2025.

### I. Introduction and Procedural History

On January 31, 2025, Texas Stock Exchange LLC (“TXSE”) filed with the Securities and Exchange Commission (“Commission”) a Form 1 application (“Form 1”) under the Securities Exchange Act of 1934 (“Act” or “Exchange Act”), seeking registration as a national securities exchange under Section 6 of the Exchange Act.<sup>1</sup> On April 2, 2025, TXSE submitted Amendment No. 1 to its Form 1 application.<sup>2</sup> Notice of the application, as amended, was published for comment in the Federal Register on April 10, 2025.<sup>3</sup> On July 9, 2025, the Commission instituted proceedings pursuant to Section 19(a)(1)(B) of the Act<sup>4</sup> to determine whether to grant or deny TXSE’s application for registration as a national securities exchange under Section 6 of the Act.<sup>5</sup> On July 29, 2025, TXSE filed another amendment to the Form 1 (“Amendment No. 2”).<sup>6</sup>

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<sup>1</sup> 15 U.S.C. 78f. The Form 1 is available on the Commission’s website at: <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/txse-form-1>. See also 15 U.S.C. 78s(a)(1) (stating that the Commission shall, “[w]ithin ninety days of the date of publication of such notice (or within such longer period as to which the applicant consents),” grant the registration or institute proceedings to determine whether the registration should be denied).

<sup>2</sup> In Amendment No. 1, TXSE submitted updated portions of its Form 1 application, including Exhibits A-3 (Proposed First Amended and Restated Limited Liability Company Agreement of Texas Stock Exchange LLC), B-1 (Rules of TXSE), C (information regarding subsidiaries or affiliates), E (description of the proposed operation of the exchange), H (listing applications), J (list of officers, governors, members of all standing committees, or persons performing similar functions), and K (Shareholders owning 5% or more).

<sup>3</sup> See Securities Exchange Act Release No. 102773 (Apr. 4, 2025), 90 FR 15375 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(a)(1)(B).

<sup>5</sup> See Securities Exchange Act Release No. 103422, 90 FR 31360 (July 14, 2025).

<sup>6</sup> In Amendment No. 2, TXSE submitted updated portions of its Form 1 application, including Exhibits A-3, B-1, C, D, E, F, H, J, and K. Amendment No. 2 is available on the Commission’s website at: <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/txse-form-1>.

Amendment No. 2 was published for comment in the Federal Register on August 5, 2025.<sup>7</sup> The Commission has received comments on the amended Form 1.<sup>8</sup>

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

## II. Statutory Standards

Pursuant to Sections 6(b) and 19(a) of the Act,<sup>9</sup> the Commission shall by order grant an application for registration as a national securities exchange if the Commission finds, among other things, that the proposed exchange is so organized and has the capacity to carry out the purposes of the Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.<sup>10</sup>

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

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<sup>7</sup> See Securities Exchange Act Release No. 103604 (July 31, 2025), 90 FR 37607.

<sup>8</sup> The public comment file for TXSE's Form 1 (File No. 10-249) is available on the Commission's website at: <https://www.sec.gov/comments/10-249/10-249.htm>.

<sup>9</sup> 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

<sup>10</sup> See also supra note 1 (discussing the time for Commission action following publication of notice of an application for exchange registration).

of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer;<sup>11</sup> (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system;<sup>12</sup> (3) not permit unfair discrimination between customers, issuers, or dealers;<sup>13</sup> and (4) protect investors and the public interest.<sup>14</sup> The Commission also finds that the proposed rules of TXSE are consistent with Section 11A of the Act.<sup>15</sup> Finally, the Commission finds that TXSE’s proposed rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>16</sup>

### III. Discussion

The Commission received comment letters expressing support for TXSE’s Form 1.<sup>17</sup>

Many commenters state that entry of TXSE in the market will increase competition in areas

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<sup>11</sup> See 15 U.S.C. 78f(b)(3).

<sup>12</sup> See 15 U.S.C. 78f(b)(5).

<sup>13</sup> See id.

<sup>14</sup> See id.

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

<sup>16</sup> 15 U.S.C. 78f(b)(8).

<sup>17</sup> See, e.g., Letters from Glen Hamer, President and CEO, Texas Association of Business, dated May 6, 2025 (“TAB Letter”); Ray Hunt, dated May 7, 2025; Morgan Meyer, Texas State Representative, dated May 13, 2025 (“Meyer Letter”); Scott Leiter, Managing Director and Chief Investor Officer, Deason Capital Services, dated May 13, 2025; R. Carter Pate, dated May 16, 2025 (“Pate Letter”); Xavier Szejnberg, Director of Wall Street for McCombs School of Business, University of Texas at Austin, dated May 16, 2025 (“Szejnberg Letter”); Phil Gramm, dated May 21, 2025 (“Gramm Letter”); John Cornyn, United States Senator, dated May 22, 2025 (“Cornyn Letter”); Michael Nicholas, CEO, Bond Dealers of America, dated May 22, 2025 (“BDA Letter”); Chris Furlow, President and CEO, Texas Bankers Association, dated May 23, 2025 (“TBA Letter”); Lee Bratcher, President, Texas Blockchain Council, dated May 23, 2025 (“TBC Letter”); Ted Cruz, United States Senator, dated May 23, 2025; Robert Arancio, Managing Director, Head of Trading, dated May 27, 2025 (“Neuberger Letter”); Drew McKnight, Co-CEO, Fortress

including listings, trading technologies, market structure, and market data, and facilitate capital formation,<sup>18</sup> as well as increase efficiency.<sup>19</sup> One commenter states the introduction of TXSE may cause existing exchanges to “revisit fee structures” and could “lead to improvements in pricing transparency.”<sup>20</sup>

One commenter opposes approval of TXSE’s Form 1, stating that “TXSE fails to present a compelling justification for its addition to the already saturated U.S. equity exchange landscape.”<sup>21</sup> This commenter further states, “fragmentation remains a persistent issue, raising questions about whether new exchanges like TXSE enhance market competition or simply complicate infrastructure without clear innovation” and that TXSE did not propose any advancements in transparency, investor access, or market efficiency.<sup>22</sup>

In contrast, a commenter states that the market, rather than the Commission, should decide how many exchanges there should be.<sup>23</sup> The commenter acknowledges “legitimate concerns” around certain market structure issues, stating that “these problems need to be

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Investment Group, dated May 27, 2025 (“Fortress Letter”); Justin Yancy, President, Texas Business Leadership Council, dated June 2, 2025; Dale Young, Chairman and CEO, Summit Financial Group, dated June 2, 2025 (“Summit Letter”); Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel Securities, dated June 12, 2025 (“Citadel Letter”); Christopher Iacovella, President and CEO, American Securities Association, dated July 9, 2025 (“ASA Letter”); John L. Thor, Co-Chair, Hal S. Scott, President, and R. Glen Hubbard, Co-Chair, Committee on Capital Markets Regulation, dated Aug. 4, 2025 (“Committee on Capital Markets Letter”).

<sup>18</sup> See, e.g., Citadel Letter at 1; TAB Letter; Meyer Letter; Committee on Capital Markets Letter at 2. Several commenters observe a downward trend in the number of public companies in recent years, and state that competition for listing services may encourage more companies to go public. See, e.g., Meyer Letter; Cornyn Letter; TBA Letter at 2; Fortress Letter at 1; Citadel Letter at 1; Committee on Capital Markets Letter at 2.

<sup>19</sup> See, e.g., TAB Letter; Gramm Letter at 2; BDA Letter at 1; Neuberger Letter at 2.

<sup>20</sup> Szejnberg Letter. Similarly, commenters state increased competition may result in lower fees and compliance costs. See, e.g., Summit Financial Group Letter; Gramm Letter at 2; and TBC Letter.

<sup>21</sup> Taylor, Masters of Public Policy Student, Northwestern University, dated July 14, 2025.

<sup>22</sup> Id. But see Citadel Letter at 1 (stating “[w]hile there is a legitimate criticism of the proliferation of securities exchanges that offer little differentiation or innovation in their products or services, the innovation TXSE is proposing is unique and value-additive for the capital markets”).

<sup>23</sup> See Letter from James J. Angel dated May 27, 2025, at 3.

addressed regardless of whether we have three exchanges or three hundred” and that such concerns should not “block approval of new exchange applications.”<sup>24</sup> Instead, according to the commenter, “[a]s long as the proposed entrant can demonstrate that it can fulfill a national securities exchange’s legal obligations under the Securities Exchange Act, then its registration should be approved.”<sup>25</sup>

The Act does not require that a new exchange be novel or that it provide innovation to the market. While adding another exchange to the national market system can impose costs to the industry, including specifically to those market participants that become members of TXSE, as stated above in Section II, the Act requires that the Commission grant an application for registration as a national securities exchange if the Commission finds that the requirements of the Act and the rules and regulations thereunder with respect to the applicant are satisfied.<sup>26</sup> For the reasons discussed throughout this order, the Commission finds that TXSE’s application, as amended, for exchange registration meets the requirements of the Act and the rules and regulations thereunder and accordingly grants the application for registration.

A. Ownership and Governance of TXSE

TXSE is a Delaware limited liability company<sup>27</sup> that will be wholly owned by its sole member, TXSE Group Inc. (“TXSE Group”), a Delaware corporation.<sup>28</sup> TXSE Group will be the

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<sup>24</sup> See id.

<sup>25</sup> See id.

<sup>26</sup> See supra notes 9-10 and accompanying text.

<sup>27</sup> See Certification of Formation of Texas Stock Exchange LLC.

<sup>28</sup> See Fourth Amended and Restated Certificate of Incorporation of TXSE Group Inc. (“TXSE Group Certificate”).

entity through which the individual investors who are ultimate owners of the Exchange will hold their ownership interests in the Exchange.<sup>29</sup>

1. TXSE Board of Directors

The Board<sup>30</sup> of TXSE (“Exchange Board”) will be its governing body and will possess all of the powers necessary for the management of its business and affairs, including governance of TXSE as a self-regulatory organization (“SRO”).<sup>31</sup> Specifically:

- the Exchange Board initially will be composed of 10 Directors;<sup>32</sup>
- one Director will be the Chief Executive Officer (“CEO”) of TXSE, who shall be considered an Industry Director;<sup>33</sup>
- at least 50% of the Directors of the Exchange Board shall be Non-Industry Directors,<sup>34</sup> and the remainder shall be Industry Directors and Member Representative Directors;

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<sup>29</sup> See Form 1, Exhibit C and Exhibit K.

<sup>30</sup> “Board” means the Board of Directors of TXSE. See Article I of the proposed First Amended and Restated Limited Liability Company Agreement of TXSE Exchange LLC (“TXSE LLC Agreement”). The TXSE LLC Agreement states that the agreement is subject to certain provisions of the Fourth Amended and Restated Stockholders’ Agreement, dated as of October 23, 2024, as amended from time to time, by and among TXSE Group and its initial stockholders (“Stockholders’ Agreement”). See TXSE LLC Agreement. See also Form 1, Exhibit C, which includes the Stockholders’ Agreement. To the extent any provision of the Stockholders’ Agreement is a stated policy, practice, or interpretation (as defined in Rule 19b-4 under the Act) of TXSE, any amendment thereto must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b-4 thereunder. See Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27) (defining “rules of an exchange”).

<sup>31</sup> See TXSE LLC Agreement, Article III, Section 1. See also Form 1, Exhibit J.

<sup>32</sup> See TXSE LLC Agreement, Article III, Section 2(a). The term “Director” is defined in TXSE LLC Agreement, Article I. A Director may not be subject to statutory disqualification. See TXSE LLC Agreement, Article III, Section 2(d).

<sup>33</sup> See TXSE LLC Agreement, Article III, Section 2(b)(i). “Industry Director” means, among other criteria, a Director who is or has served within the prior three years an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer. See TXSE LLC Agreement, Article I, for a description of all of the circumstances regarding when a Director would be considered an Industry Director. TXSE LLC Agreement, Article I.

<sup>34</sup> “Non-Industry Director” means a Director who is an Independent Director or any other individual who would not be an Industry Director. See TXSE LLC Agreement, Article I. “Independent Director” means a

- at least 20% of the Directors on the Exchange Board shall be Member Representative Directors;<sup>35</sup>
- at least two of the Non-Industry Directors shall also qualify as Independent Directors;<sup>36</sup> and
- during such time as TXSE operates a listings business, the Board shall include at least one Director who is representative of issuers and investors and not associated with an Exchange Member, a broker, or a dealer.<sup>37</sup>

The initial Directors of the Exchange Board will be appointed by TXSE Group and will serve until the first annual meeting of the LLC Member.<sup>38</sup> The first annual meeting of the LLC

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Director who has no material relationship with TXSE or any affiliate of TXSE or any Exchange Member or any affiliate of any such Exchange Member; provided, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of TXSE or TXSE Group. See id.

<sup>35</sup> See TXSE LLC Agreement, Article III, Section 2(b)(ii). “Member Representative Director” means a Director who has been appointed as such to the initial Exchange Board pursuant to Section 3(g) of the TXSE LLC Agreement or elected by TXSE Group after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the TXSE LLC Agreement and confirmed as the nominee of Exchange members after majority vote of Exchange Members, if applicable. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member. See TXSE LLC Agreement, Article I. A “Stockholder Exchange Member” means an Exchange Member that also maintains, directly or indirectly, an ownership interest in TXSE. See id. “Exchange Member” or “Member” means any registered broker or dealer that has been admitted to membership in the national securities exchange operated by TXSE. An Exchange Member shall have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Exchange Act. See id. See also TXSE Rule 1.005(q).

<sup>36</sup> See TXSE LLC Agreement, Article III, Section 2(b)(ii). In addition, the Exchange Board shall have a “Lead Director,” who shall be an Independent Director designated by the Exchange Board and will preside over executive sessions of the Exchange Board. See TXSE LLC Agreement, Article III, Section 4.

<sup>37</sup> See TXSE LLC Agreement, Article III, Section 2(b)(ii). Such Director may be, but is not required to be, an Independent Director. Id.

<sup>38</sup> See TXSE LLC Agreement, Article III, Section 3(g). “LLC Member” means any person who maintains a direct ownership interest in TXSE, which shall initially be TXSE Group. See TXSE LLC Agreement, Article I. The Exchange represents that if the Commission approves the Exchange’s Form 1 application, TXSE Group, as the controlling LLC Member of the Exchange, will appoint interim Directors of the Exchange Board which will include interim Member Representative Director(s). Upon the appointment of the Interim Directors by TXSE Group, the Interim Board would meet the Board composition requirements set forth in the TXSE LLC Agreement. The Exchange also represents that, prior to the commencement of operations as an Exchange, the Exchange would complete the full nomination, petition and voting processes set forth in the TXSE LLC Agreement. See Form 1, Exhibit J.

Member will be held within 90 days after the Commission grants TXSE's exchange registration.<sup>39</sup>

In addition, TXSE Group will appoint the initial Nominating Committee and Member Nominating Committee, consistent with each committee's compositional requirements, to nominate candidates for election to the Exchange Board.<sup>40</sup> The Nominating Committee and Member Nominating Committee, after completion of their respective duties for nominating directors for election to the Board for that year, will recommend candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable.<sup>41</sup> Exchange Members will have rights to nominate and elect additional candidates for the Member Nominating Committee pursuant to a petition process.<sup>42</sup>

The Nominating Committee will nominate candidates for election to the Board.<sup>43</sup> For Member Representative Director positions, the Member Nominating Committee, composed solely of Member Representative Members,<sup>44</sup> will solicit input from Exchange Members, and Exchange Members may submit petition candidates.<sup>45</sup> If no candidates are nominated pursuant to a petition process, then the initial nominees approved and submitted by the Member Nominating Committee will be nominated as Member Representative Directors by the Nominating Committee.<sup>46</sup> If a petition process produces additional candidates, then the candidates nominated

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<sup>39</sup> See TXSE LLC Agreement, Article III, Section 3(g).

<sup>40</sup> See TXSE LLC Agreement, Article V1.

<sup>41</sup> See id.

<sup>42</sup> See id.

<sup>43</sup> See TXSE LLC Agreement, Article V, Section 2.

<sup>44</sup> See TXSE LLC Agreement, Article V, Section 3. "Member Representative Member" means a member of any committee or hearing panel who is an officer, director, employee or agent of an Exchange Member that is not a Stockholder Exchange Member. See TXSE LLC Agreement, Article I.

<sup>45</sup> See TXSE LLC Agreement, Article III, Section 3.

<sup>46</sup> See TXSE LLC Agreement, Article III, Section 3(e).



pursuant to the petition process, together with those nominated by the Member Nominating Committee, will be presented to Exchange Members for election to determine the final designees for any open Member Representative Director positions.<sup>47</sup> In the event of a contested election, the candidates who receive the most votes will be selected as the Member Representative Director designees by the Member Nominating Committee.<sup>48</sup>

The TXSE governance provisions are consistent with the Act. In particular, the requirement that the number of Member Representative Directors must be at least 20% of the Board and the means by which they will be chosen by Exchange Members provides for the fair representation of members in the selection of directors and the administration of TXSE and therefore are consistent with Section 6(b)(3) of the Act.<sup>49</sup> As the Commission has previously stated, this requirement helps to ensure that members have a voice in an exchange's self-regulatory program, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.<sup>50</sup>

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<sup>47</sup> See id.

<sup>48</sup> See TXSE LLC Agreement, Article III, Section 3(f).

<sup>49</sup> 15 U.S.C. 78f(b)(3).

<sup>50</sup> See, e.g., Securities Exchange Act Release Nos. 102853 (Apr. 11, 2025), 90 FR 16207 (Apr. 17, 2025) (File No. 10-244) (order granting exchange registration of Green Impact Exchange, LLC ("GIX")) ("GIX Order"); 102650 (Mar. 13, 2025), 90 FR 12590 (Mar. 18, 2025) (order granting exchange registration of MX2 LLC ("MX2")) ("MX2 Order"); 101777 (Nov. 27, 2024), 89 FR 97092 (Dec. 6, 2024) (File No. 10-242) (order granting exchange registration of 24X National Exchange LLC ("24X")) ("24X Order"); 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10-240) (order granting exchange registration of MIAX Sapphire, LLC; 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) (File No. 10-237) (order granting exchange registration of MEMX LLC ("MEMX")) ("MEMX Order"); 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (File No. 10-234) (order granting exchange registration of Long Term Stock Exchange, Inc. ("LTSE")) ("LTSE Order"); 79543 (Dec. 13, 2016), 81 FR 92901, 92903 (Dec. 20, 2016) (File No. 10-227) (order granting exchange registration of MIAX PEARL, LLC ("MIAX PEARL")) ("MIAX PEARL Order"); 68341 (Dec. 3, 2012), 77 FR 73065, 73067 (Dec. 7, 2012) (File No. 10-207) (order granting exchange registration of Miami International Securities Exchange, LLC ("MIAX")) ("MIAX Order"); 58375 (Aug. 18, 2008), 73 FR 49498, 49501 (Aug. 21, 2008) (File No. 10-182) (order granting exchange registration of BATS Exchange, Inc. ("BATS")) ("BATS Order"); 53128 (Jan. 13, 2006), 71 FR 3550, 3553 (Jan. 23, 2006) (File No. 10-131) (order granting exchange registration of The Nasdaq Stock Market, Inc. ("Nasdaq")) ("Nasdaq Order").

In addition, with respect to the requirements that the number of Non-Industry Directors equal or exceed the number of Industry Directors and Member Representative Directors and that at least two Non-Industry Directors shall also qualify as Independent Directors, the proposed composition of the Exchange Board satisfies the requirements in Section 6(b)(3) of the Act.<sup>51</sup> The Commission previously has stated that the inclusion of public, non-industry representatives on exchange oversight bodies is an important mechanism to support an exchange's ability to protect the public interest.<sup>52</sup> Further, the presence of public, non-industry representatives can help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. Public directors can provide unbiased perspectives, which may enhance the ability of the Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange. For similar reasons, the additional composition requirement that applies during such time as TXSE operates a listings business (i.e., the requirement that one Director be representative of issuers and investors and not associated with an Exchange Member<sup>53</sup>) is consistent with the requirements of Section 6(b)(3) of the Act.

## 2. Interim Board

As discussed above, TXSE Group will hold a special meeting to appoint interim Directors of the Board ("Interim Board"), which will include interim Member Representative Directors.<sup>54</sup> Upon appointment of the interim Directors, the Interim Board will meet the

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<sup>51</sup> 15 U.S.C. 78f(b)(3).

<sup>52</sup> See, e.g., GIX Order, supra note 50, at 16210; MX2 Order, supra note 50, at 12592; 24X Order, supra note 50, at 97094; MEMX Order, supra note 50, at 27452; LTSE Order, supra note 50, at 21843; MIAx PEARL Order, supra note 50, at 92903; MIAx Order, supra note 50, at 73067; BATS Order, supra note 50, at 49501; and Nasdaq Order, supra note 50, at 3553.

<sup>53</sup> See TXSE LLC Agreement, Article III, Section 2(b)(ii)(C).

<sup>54</sup> See Form 1, Exhibit J. See also supra note 38.

Exchange Board composition requirements set forth in the TXSE LLC Agreement.<sup>55</sup> The Interim Board will serve only until the first annual meeting of the LLC Member, which will be held within 90 days after the Commission grants the Exchange's registration as a national securities exchange.<sup>56</sup> The Exchange represents that it will complete the full nomination, petition, and voting process set forth in the TXSE LLC Agreement, which will provide persons that are approved as Exchange Members after the date that the Commission grants the Exchange's registration as a national securities exchange with the opportunity to participate in the selection of Member Representative Directors as promptly as possible after the effective date of the TXSE LLC Agreement.<sup>57</sup>

### 3. Exchange Committees

TXSE has proposed to establish several named committees of the Exchange Board, including an Appeals Committee<sup>58</sup> and a Regulatory Oversight Committee,<sup>59</sup> as well as the Nominating Committee and Member Nominating Committee, discussed above.<sup>60</sup>

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<sup>55</sup> See id. See also TXSE LLC Agreement, Article III, Section 2.

<sup>56</sup> See TXSE LLC Agreement, Article III, Section 3(g).

<sup>57</sup> See Form 1, Exhibit J.

<sup>58</sup> See TXSE LLC Agreement, Article IV, Section 1. The Appeals Committee will preside over all appeals related to disciplinary and adverse action determinations in accordance with TXSE rules. See TXSE LLC Agreement, Article IV, Section 6(b).

<sup>59</sup> See TXSE LLC Agreement, Article IV, Section 1. The Regulatory Oversight Committee will be responsible for establishing the goals, assessing the performance, and fixing the compensation of the Chief Regulatory Officer and for recommending personnel actions involving the Chief Regulatory Officer and senior regulatory personnel. See TXSE LLC Agreement, Article IV, Section 6(a).

<sup>60</sup> The Exchange Board could also establish additional committees. See TXSE LLC Agreement, Article IV, Section 1. All committees of the Exchange Board will be subject to the control and supervision of the Exchange Board. See id.

The Appeals Committee will consist of two Independent Directors, and one Member Representative Director.<sup>61</sup> Each member of the Regulatory Oversight Committee must be an Independent Director.<sup>62</sup>

The TXSE proposed named committees, which are similar to the named committees maintained by other exchanges,<sup>63</sup> are designed to help enable the Exchange to carry out its responsibilities under the Act and are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.<sup>64</sup>

#### B. TXSE Group and Regulation of the Exchange

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

##### 1. Ownership Structure; Ownership and Voting Limitations

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<sup>61</sup> See TXSE LLC Agreement, Article IV, Section 6(b).

<sup>62</sup> See TXSE LLC Agreement, Article IV, Section 6(a).

<sup>63</sup> See, e.g., GIX Order, *supra* note 50, at 16210; MEMX Order, *supra* note 50, at 27453. See also Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10-222) (order granting exchange registration of Investors' Exchange, LLC ("IEX")) ("IEX Order"); Article IV, Section 4.1 of the Eleventh Amended and Restated Bylaws of Cboe Exchange, Inc.

<sup>64</sup> 15 U.S.C. 78f(b)(1).

As stated above, TXSE will be owned by TXSE Group. The TXSE Group Certificate includes restrictions on the ability to own and vote shares of stock of TXSE Group.<sup>65</sup> These limitations are designed to prevent any TXSE Group stockholder from exercising undue control over the operation of the Exchange and to ensure that the Exchange and the Commission are able to carry out their regulatory obligations under the Act.

In particular, for so long as TXSE Group shall control, directly or indirectly, any Regulated Securities Exchange Subsidiary, which would include TXSE,<sup>66</sup> no Person,<sup>67</sup> either alone or together with its Related Persons,<sup>68</sup> will be permitted to beneficially own, directly or indirectly, shares of stock of TXSE Group representing in the aggregate more than 40% of the then-outstanding shares of stock of TXSE Group.<sup>69</sup> A more restrictive condition will apply to the broker-dealer members of the Exchange, who will be prohibited from beneficially owning,

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<sup>65</sup> These provisions are consistent with ownership and voting limits approved by the Commission for other SROs, except as discussed below. See, e.g., GIX Order, supra note 50; MX2 Order, supra note 50; 24X Order, supra note 50; MEMX Order, supra note 50; LTSE Order, supra note 50; MIAx PEARL Order, supra note 50; MIAx Order, supra note 50; BATS Order, supra note 50, and IEX Order, supra note 63; see also Securities Exchange Act Release Nos. 76998 (Jan. 29, 2016), 81 FR 6066 (Feb. 4, 2016) (File No. 10-221) (order granting exchange registration of ISE Mercury, LLC (“ISE Mercury Order”)); 70050 (July 26, 2013), 78 FR 46622 (Aug. 1, 2013) (File No. 10-209) (order granting exchange registration of ISE Gemini, LLC (“ISE Gemini Order”)); 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (CBOE-2008-88) (Cboe Exchange demutualization order); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR-NSX-2006-03) (National Stock Exchange demutualization order); 51149 (Feb. 8, 2005), 70 FR 7531 (Feb. 14, 2005) (SR-CHX-2004-26) (Chicago Stock Exchange demutualization order); and 49098 (Jan. 16, 2004), 69 FR 3974 (Jan. 27, 2004) (SR-Phlx-2003-73) (Philadelphia Stock Exchange demutualization order).

<sup>66</sup> “Regulated Securities Exchange Subsidiary” means any registered national securities exchange controlled, directly or indirectly, by TXSE Group, including TXSE. See TXSE Group Certificate, Article SIXTH.

<sup>67</sup> See TXSE Group Certificate, Article SIXTH (defining “Person”).

<sup>68</sup> See id. (defining “Related Persons”). Pursuant to the TXSE Group Certificate, “Related Persons” include, among others, any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing), other than the Stockholders’ Agreement, to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of the Corporation. Id. As stated above, any amendment to a provision of the Stockholders’ Agreement would be subject to Section 19(b) and Rule 19b-4 thereunder, to the extent the provision is a rule of TXSE. See supra note 30.

<sup>69</sup> See TXSE Group Certificate, Article SEVENTH(b)(i)(A). There are limited exceptions to these prohibitions. See infra notes 75-77 and accompanying text.

directly or indirectly, either alone or together with their Related Persons, shares of stock of TXSE Group representing in the aggregate more than 20% of the then-outstanding shares of stock of TXSE Group.<sup>70</sup> If any Person, either alone or together with their Related Persons, at any time beneficially owns shares of stock of TXSE Group in violation of these ownership limits, TXSE Group will be required (to the extent funds are legally available) to redeem the shares in excess of the applicable ownership limit at their par value.<sup>71</sup>

In addition, for so long as TXSE Group shall control, directly or indirectly, any Regulated Securities Exchange Subsidiary, which would include TXSE, no Exchange Member, alone or together with its Related Persons, shall be entitled to vote or cause the voting of shares of stock of TXSE Group, beneficially owned directly or indirectly by such Exchange Member or its Related Persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 20% of the then-outstanding votes entitled to be cast on such matter (“Voting Limitation”).<sup>72</sup> Further, if any Exchange Member, either alone or together with its Related Persons, enters into any agreement, plan or other arrangement with any other person, either alone or together with its Related Persons, under circumstances that would result in shares of stock of TXSE Group that would be subject to such

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<sup>70</sup> See TXSE Group Certificate, Article SEVENTH(b)(i)(B). This restriction, unlike others discussed below (see infra note 75-77 and accompanying text), cannot be waived. See TXSE Group Certificate, Article SEVENTH(b)(ii).

<sup>71</sup> See TXSE Group Certificate, Article SEVENTH(b)(v), (c). TXSE Group shall redeem the number of shares of stock necessary so that such Person, together with its Related Persons, shall beneficially own directly or indirectly shares of stock of TXSE Group not in violation of the ownership limitations, after taking into account that such redeemed shares shall become treasury shares and shall no longer be deemed to be outstanding. See id. In addition, if any Person, either alone or together with its Related Persons, at any time purports to acquire beneficial ownership of shares of stock of TXSE Group in violation of the ownership limitations, then TXSE Group shall record on its books the transfer of only that number of shares that would not violate the ownership limitations and shall treat the remaining shares as owned by the purported transferor, for all purposes, including without limitation, voting, payment of dividends and distributions with respect to such shares whether upon liquidation or otherwise. TXSE Group Certificate, Article SEVENTH(b)(iv).

<sup>72</sup> See TXSE Group Certificate, Article SEVENTH(a)(i).

agreement, plan, or other arrangement not being voted on any matter or any proxy relating thereto being withheld, where the effect of such agreement, plan, or other arrangement would be to enable any Exchange Member, either alone or together with its Related Persons, to vote, possess the right to vote, or cause the voting of shares of stock of TXSE Group that would exceed 20% of the then outstanding votes entitled to be cast on such matter, then the Exchange Member with the right to vote such shares, shall not be entitled to vote the excess shares and TXSE Group shall disregard any purported voting of such shares.<sup>73</sup> Unlike other registered national securities exchange structures, the TXSE Group Certificate does not apply a similar 20% Voting Limitation to TXSE Group stockholders that are not also Exchange Members.<sup>74</sup>

TXSE Group will be permitted to waive the 40% ownership limitation pursuant to a resolution of the TXSE Group Board,<sup>75</sup> if it makes certain determinations.<sup>76</sup> Any such waiver will not be effective unless and until approved by the Commission.<sup>77</sup> TXSE Group would not be permitted to waive the 20% ownership limitation or 20% Voting Limitation with respect to Exchange Members and their Related Persons.<sup>78</sup>

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<sup>73</sup> See id.

<sup>74</sup> See TXSE Group Certificate. See also Notice, supra note 3, at 15375, n.2; supra note 65.

<sup>75</sup> See TXSE Group Certificate, Article SEVENTH(b)(ii)

<sup>76</sup> See TXSE Group Certificate, Article SEVENTH(b)(iii). The required determinations are that such waiver will not impair the ability of TXSE Group or TXSE to carry out their respective responsibilities under the Act and the rules and regulations promulgated thereunder; that such waiver is otherwise in the best interests of TXSE Group, its stockholders, and TXSE; that such waiver will not impair the ability of the Commission to enforce the Act; and that such Person and its Related Persons are not subject to any applicable “statutory disqualification” (as defined in Section 3(a)(39) of the Act). See id. These provisions are consistent with provisions related to the waiver of ownership and voting limits approved by the Commission for other SROs. See, e.g., GIX Order, MX2 Order, 24X Order, MEMX Order, LTSE Order, MIAx PEARL Order, MIAx Order, and BATS Order, supra note 50; ISE Mercury Order and ISE Gemini Order, supra note 65; IEX Order, supra note 63; and Securities Exchange Act Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010) (File Nos. 10-194 and 10-196) (order granting exchange registration of DirectEdge exchanges) (“DirectEdge Exchanges Order”).

<sup>77</sup> See TXSE Group Certificate, Article SEVENTH(b)(ii)(C).

<sup>78</sup> See TXSE Group Certificate, Article SEVENTH(a), (b)(iii)(D).

Any person that proposes to own shares of stock of TXSE Group in excess of the 40% ownership limitation, will be required to deliver written notice to the TXSE Group of its intention.<sup>79</sup> The notice must be delivered to TXSE Group not less than 45 days (or any shorter period to which the TXSE Group Board expressly consents) before the proposed ownership of such stock.<sup>80</sup>

The TXSE Group Certificate also contains provisions that are designed to further safeguard the ownership limitations and Voting Limitation described above or are otherwise related to direct and indirect changes in control. Specifically, TXSE Group shall have the right to require any Person and its Related Persons that the TXSE Group Board reasonably believes to be subject to the Voting Limitation, to beneficially own stock in violation of the ownership limitations, or to beneficially own an aggregate of 5% or more of the then outstanding shares of stock of TXSE Group entitled to vote on any matter, to provide to TXSE Group upon request, complete information as to all shares of stock of TXSE Group beneficially owned by such Person and its Related Persons.<sup>81</sup>

The TXSE LLC Agreement does not include the same change of control provisions that are present in the TXSE Group Certificate because the TXSE LLC Agreement instead explicitly identifies its owner (TXSE Group) by name as the “LLC Member” of TXSE.<sup>82</sup> Thus, any changes in the ownership of TXSE would require the TXSE LLC Agreement to be amended.

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<sup>79</sup> See TXSE Group Certificate, Article SEVENTH(b)(ii)(A).

<sup>80</sup> See id. “TXSE Group Board” means the Board of Directors of TXSE Group. See TXSE Group Certificate, Article FOURTH(c).

<sup>81</sup> See TXSE Group Certificate, Article SEVENTH(d). This provision will also provide TXSE Group the right to request from such persons information as to any other factual matter relating to the applicability or effect of TXSE Group Certificate Article SEVENTH, which includes the ownership limitations and Voting Limitation, as may reasonably be requested of such person and its Related Persons. See id.

<sup>82</sup> See TXSE LLC Agreement, Exhibit A.



Any amendment to the TXSE LLC Agreement, including to ownership of TXSE, would constitute a proposed rule change under Section 19(b) of the Act<sup>83</sup> and Rule 19b-4<sup>84</sup> thereunder that will be required to be filed with, or filed with and approved by, the Commission.<sup>85</sup>

Moreover, pursuant to the TXSE LLC Agreement itself, any transfer of limited liability company interests of TXSE will be subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act.<sup>86</sup>

Although TXSE Group is not directly responsible for regulation, its activities with respect to the operation of TXSE must be consistent with, and must not interfere with, the self-regulatory obligations of TXSE.<sup>87</sup> As described above, the provisions applicable to direct and indirect changes in control of TXSE Group and TXSE, as well as the Voting Limitation imposed on owners of TXSE Group who also are Exchange Members, are designed to help prevent any owner of TXSE Group from exercising undue influence or control over the operation of TXSE and to help ensure that TXSE retains a sufficient degree of independence to effectively carry out its regulatory obligations under the Act.

In addition, these limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange. As the Commission has stated in the past, a member's ownership interest in an entity that controls an exchange could become so large as to cast doubt on whether the exchange may fairly and

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<sup>83</sup> 15 U.S.C. 78s(b).

<sup>84</sup> 17 CFR 240.19b-4.

<sup>85</sup> See TXSE LLC Agreement, Article VIII, Sections 1(b), 4.

<sup>86</sup> See TXSE LLC Agreement, Article X, Section 9.

<sup>87</sup> See, e.g., IEX Order, supra note 63.

objectively exercise its self-regulatory responsibilities with respect to such member.<sup>88</sup> A member that is a controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. As such, these requirements are designed to minimize the potential that a person or entity can improperly interfere with or restrict the ability of the Exchange to effectively carry out its regulatory oversight responsibilities under the Act.

The Commission has recognized that “to be effective, an SRO must be structured in such a way that regulatory staff is unencumbered by inappropriate business pressure” that could “inhibit effective regulation and discourage vigorous enforcement against members.”<sup>89</sup> To help ensure independent and empowered SRO regulatory operations, TXSE has, among other things, adopted a governance structure designed to mitigate the inherent conflict. Specifically, TXSE has an independent Chief Regulatory Officer that oversees the Exchange's regulatory operations and that reports to an independent Regulatory Oversight Committee of the Exchange Board. In addition, TXSE has an Exchange Board composed of at least 50% Non-Industry Directors<sup>90</sup> with

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<sup>88</sup> See, e.g., GIX Order, supra note 50; MX2 Order, supra note 50; 24X Order, supra note 50; MEMX Order, supra note 50; LTSE Order, supra note 50; MIAX PEARL Order, supra note 50; MIAX Order, supra note 50; BATS Order, supra note 50; IEX Order, supra note 63; ISE Mercury Order, supra note 65; and DirectEdge Exchanges Order, supra note 76.

<sup>89</sup> See, e.g., Securities Exchange Act Release No. 50700 (Nov. 18, 2004), 69 FR 71256 (Dec. 8, 2004) (Concept Release Concerning Self-Regulation). Nevertheless, the federal securities laws require member involvement in the overall governance and administration of an exchange. See, e.g., 15 U.S.C. 78f(b)(3) (requiring an exchange, among other things, to provide to its broker-dealer members “a fair representation of its members in the selection of its directors and administration of its affairs”).

<sup>90</sup> In addition, at least two of the Non-Industry Directors shall be Independent Directors. See TXSE LLC Agreement, Article III, Section 2(b)(ii).

required key board committees that are either fully independent or majority independent, such as the Regulatory Oversight Committee<sup>91</sup> and the Appeals Committee.<sup>92</sup>

Ownership and voting limits in the governing documents of an exchange and/or its holding company further protect the status of SRO independence. The provisions that TXSE has proposed are consistent with those in place across all exchanges today, except as described above regarding the application of the Voting Limitation solely to TXSE Group stockholders that are also Exchange Members, and are designed to prevent any direct or indirect owner from exercising control over the operation of the exchange as well as to ensure that the exchange and the Commission are able to carry out their regulatory obligations under the Act.<sup>93</sup> These

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<sup>91</sup> Each member of the Regulatory Oversight Committee will be an Independent Director. See TXSE LLC Agreement, Article IV, Section 6(a).

<sup>92</sup> The Appeals Committee will consist of two Independent Directors and one Member Representative Director. See TXSE LLC Agreement, Article IV, Section 6(b).

<sup>93</sup> The Exchange has not proposed to impose a voting limitation on direct and indirect owners of TXSE Group that are not Exchange Members. While the Commission has previously found such a limitation consistent with the Act in approving other exchange governance structures (see, e.g., supra note 65), the lack of such a provision does not prevent a finding that TXSE's proposed governance structure is consistent with the Act, and with Section 6(b)(1) in particular, which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act. When proposing rules pertaining to the governance, administration, transparency and ownership of SROs in 2004, including proposing to require exchanges to limit the ability of their members that are brokers or dealers to own or vote a significant interest in the exchange, the Commission did not propose to impose voting or ownership limitations on persons that were not also exchange members. See Securities Exchange Act Release No. 50699 (Nov. 18, 2004), 69 FR 71126, at 71143-46 (Dec. 8, 2004). The Commission stated that "the conflict with respect to members creates a risk that a member could use its controlling interest in its regulator to influence the regulatory process to its benefit." Id. at 71143. Accordingly, because of "the significant incentives for a member to attempt to exercise undue influence in such a case," the Commission proposed to require SROs to impose voting and ownership limitations on members. Id. In contrast, the Commission proposed a less restrictive approach for non-members than the rules that had, at the time, been adopted by exchanges. The Commission recognized that there is the potential for any person that controls an exchange to direct its operation so as to cause the SRO to neglect its regulatory obligations under the Act, but determined not to propose the approach then adopted by exchanges that applied ownership and voting limitations on persons that were not exchange members in light of the substantive governance and other standards it was proposing to strengthen the independence of SROs and their regulatory functions. See id. at 71143. As discussed herein, exchanges have implemented many of the types of provisions that the Commission proposed in 2004 to strengthen such independence. TXSE has similarly proposed to implement such provisions as described herein. The Commission finds that, in light of such other provisions, including TXSE's proposed ownership limitations and Voting Limitation, TXSE's proposed governance structure is consistent with the Act.

provisions impose limits on voting and ownership of exchange holding companies, with more stringent limits imposed on member owners.<sup>94</sup>

As a registered exchange, TXSE will be subject to the same regulatory standards applicable to any other exchange regardless of the identity of the ultimate owners of that exchange. As discussed above and further below and except as otherwise noted, TXSE has proposed to adopt industry-standard protections in a governance structure for itself and its holding company that is designed to preserve TXSE's self-regulatory independence by protecting TXSE from inappropriate business pressures. The proposed provisions, including the proposed ownership limitations and Voting Limitation, when taken together should serve to mitigate potential conflicts of interest and protect the regulatory operations of TXSE.<sup>95</sup>

TXSE's and TXSE Group's proposed governance provisions are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.<sup>96</sup> In particular, these requirements are designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

## 2. Regulatory Independence and Oversight

Although TXSE Group will not itself carry out regulatory functions, its activities with respect to the operation of TXSE must be consistent with, and must not interfere with, TXSE's

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<sup>94</sup> See supra notes 65-78 and accompanying text.

<sup>95</sup> See, e.g., infra notes 98-109 and accompanying text (discussing provisions designed to help ensure the independence of TXSE's regulatory function and facilitate the ability of TXSE to carry out its regulatory responsibilities under, and operate in a manner consistent with, the Act). See also infra notes 111-115 (discussing Commission authority and controlling person obligations under Sections 19, 20 and 21C of the Act).

<sup>96</sup> 15 U.S.C. 78f(b)(1).

self-regulatory obligations. In this regard, TXSE and TXSE Group propose to adopt certain provisions in their respective governing documents that are designed to help maintain the independence of the regulatory functions of TXSE. These proposed provisions are substantially similar to those included in the governing documents of other exchanges that recently have been granted registration.<sup>97</sup> Specifically:

- the directors, officers, employees, and agents of TXSE Group must give due regard to the preservation of the independence of the self-regulatory function of TXSE and to its obligations to investors and the general public and must not take actions which would interfere with the effectuation of decisions by the Exchange Board relating to its regulatory functions (including disciplinary matters) or which would adversely affect TXSE's ability to carry out its responsibilities under the Act.<sup>98</sup>
- TXSE Group must comply with the federal securities laws and the rules and regulations promulgated thereunder, and must cooperate with the Commission and TXSE, pursuant to, and to the extent of, their respective regulatory authority.<sup>99</sup> In

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<sup>97</sup> See, e.g., GIX Order, supra note 50; MX2 Order, supra note 50; 24X Order, supra note 50; MEMX Order, supra note 50; LTSE Order, supra note 50; IEX Order, supra note 63; and DirectEdge Exchanges Order, supra note 76.

<sup>98</sup> See Second Amended and Restated Bylaws of TXSE Group Inc. ("TXSE Group Bylaws"), Article 12, Section 12.3. Similarly, Article III, Section 1(d) of the TXSE LLC Agreement requires the Exchange Board and each Director, when managing the business and affairs of TXSE, to consider the requirements of Section 6(b) of the Act and requires each Director, officer, or employee of TXSE to comply with the federal securities laws and regulations thereunder and cooperate with the Commission, and TXSE pursuant to its regulatory authority. Article III, Section 1(e) of the TXSE LLC Agreement also requires the Exchange Board, when evaluating any proposal to take into account all factors that the Exchange Board deems relevant, including, without limitation, to the extent deemed relevant: the potential impact on the integrity, continuity and stability of the national securities exchange operated by TXSE and the other operations of TXSE, on the ability to prevent fraudulent and manipulative acts and practices, and on investors and the public, and whether such proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

<sup>99</sup> See TXSE Group Bylaws, Article 12, Section 12.1.

addition, TXSE Group's officers, directors, employees, and agents must comply with the federal securities laws and the rules and regulations promulgated thereunder and cooperate with the Commission and TXSE pursuant to, and to the extent of, their respective regulatory authority.<sup>100</sup> TXSE Group must take reasonable steps necessary to cause its agents to so cooperate.<sup>101</sup>

- TXSE Group, and its officers, directors, employees, and agents must submit to the jurisdiction of the U.S. federal courts, the Commission, and TXSE, for purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, TXSE's activities.<sup>102</sup>
- All books and records of TXSE reflecting confidential information pertaining to the self-regulatory function of TXSE (including but not limited to disciplinary matters, trading data, trading practices, and audit information) must be retained in confidence by TXSE and its personnel, including directors, officers, Board Observers, employees, and agents, and will not be used by TXSE for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any TXSE member) other than to personnel of the Commission, and those personnel of TXSE, members of committees of the Exchange Board, members of the Exchange Board, or hearing officers and other agents of TXSE, to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of

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<sup>100</sup> See TXSE Group Bylaws, Article 12, Section 12.4.

<sup>101</sup> See TXSE Group Bylaws, Article 12, Section 12.1.

<sup>102</sup> See TXSE Group Certificate, Article SEVENTEENTH(a).

TXSE.<sup>103</sup> Similar provisions apply to TXSE Group and its directors, officers, employees, and agents.<sup>104</sup>

- The books and records of TXSE and TXSE Group must be maintained in the United States<sup>105</sup> and, to the extent they are related to the operation or administration of TXSE, TXSE Group's books and records will be subject at all times to inspection and copying by the Commission and TXSE.<sup>106</sup>
- Furthermore, to the extent they are related to the business of TXSE, the books, records, premises, officers, directors, employees, and agents of TXSE Group will be deemed to be the books, records, premises, officers, directors, employees, and agents of TXSE, for purposes of, and subject to oversight pursuant to, the Act.<sup>107</sup>
- TXSE Group will take reasonable steps necessary to cause its officers, directors, employees, and agents, prior to accepting a position as an officer, director, employee or agent (as applicable) with TXSE Group to consent in writing to the applicability of provisions regarding non-interference, confidentiality, books and records,

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<sup>103</sup> See TXSE LLC Agreement, Article X, Section 4. Pursuant to Article I of the TXSE LLC Agreement, "Board Observer" means the representative that certain investors in TXSE Group have the right to designate to attend all meetings of the Exchange Board, and any committee thereof, in a non-voting observer capacity, pursuant to the Stockholders' Agreement.

<sup>104</sup> See TXSE Group Bylaws, Article 11. The TXSE Group Bylaws further provide that all books and records of TXSE reflecting confidential information pertaining to the self-regulatory function of TXSE that come into the possession of TXSE Group, and the information contained in those books and records of TXSE, will be retained in confidence by TXSE and the officers, directors, employees and agents of TXSE Group. See id. The TXSE Group and TXSE governing documents acknowledge that requirements to keep such information confidential shall not limit or impede the rights of the Commission to access and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, or limit the ability of officers, directors, employees, or agents of TXSE or TXSE Group to disclose such information to the Commission or TXSE. See TXSE LLC Agreement, Article X, Section 4 and TXSE Group Bylaws, Article 11.

<sup>105</sup> See TXSE LLC Agreement, Article X, Section 4; and TXSE Group Bylaws, Article 1, Section 1.3.

<sup>106</sup> See TXSE Group Bylaws, Article 11.

<sup>107</sup> See id.

compliance and cooperation, jurisdiction, and regulatory obligations, with respect to their activities related to TXSE.<sup>108</sup>

- The TXSE Group Bylaws require that, so long as TXSE Group controls TXSE, any changes to that document must be submitted to the Exchange Board for approval, and, if such change is required to be filed with the Commission pursuant to Section 19(b) of the Act and the rules and regulations thereunder, such change shall not be effective until filed with and effective by operation of law, or filed with, and approved by, the Commission.<sup>109</sup>

The provisions discussed in this section, which are designed to help ensure the independence of TXSE’s regulatory function and facilitate the ability of TXSE to carry out its regulatory responsibilities under, and operate in a manner consistent with, the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.<sup>110</sup>

Further, Section 19(h)(1) of the Act<sup>111</sup> provides the Commission with the authority “to suspend for a period not exceeding twelve months or revoke the registration of [an SRO], or to censure or impose limitations upon the activities, functions, and operations of [an SRO], if [the Commission] finds, on the record after notice and opportunity for hearing, that [the SRO] has violated or is unable to comply with any provision of the Act, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance . .

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<sup>108</sup> See TXSE Group Bylaws, Article 12, Section 12.2; TXSE Group Certificate, Article EIGHTEENTH.

<sup>109</sup> See TXSE Group Bylaws, Article 9, Section 9.2; TXSE Group Certificate, Article FOURTEENTH.

<sup>110</sup> 15 U.S.C. 78f(b)(1).

<sup>111</sup> See 15 U.S.C. 78s(h)(1).



.” with any such provision by its members (including associated persons thereof). If the Commission were to find, or become aware of, through staff review and inspection or otherwise, facts indicating any violations of the Act, including without limitation Sections 6(b)(1) and 19(g)(1),<sup>112</sup> these matters could provide the basis for a disciplinary proceeding under Section 19(h)(1) of the Act.

Even in the absence of the governance provisions described above, under Section 20(a) of the Act,<sup>113</sup> any person with a controlling interest in TXSE would be jointly and severally liable with and to the same extent that TXSE is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act<sup>114</sup> creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act<sup>115</sup> authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to TXSE Group.

### 3. Regulatory Oversight Committee

The regulatory operations of TXSE will be monitored by the Regulatory Oversight Committee of the Exchange Board. As mentioned above, the Regulatory Oversight Committee

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<sup>112</sup> 15 U.S.C. 78f(b)(1); 15 U.S.C. 78s(g)(1).

<sup>113</sup> 15 U.S.C. 78t(a).

<sup>114</sup> 15 U.S.C. 78t(e).

<sup>115</sup> 15 U.S.C. 78u-3.

will consist only of Independent Directors.<sup>116</sup> The Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of TXSE’s regulatory and SRO responsibilities, assessing TXSE’s regulatory performance, and assisting the Exchange Board (and committees of the Exchange Board) in reviewing TXSE’s regulatory plan and the overall effectiveness of TXSE’s regulatory functions.<sup>117</sup>

Further, the Chief Regulatory Officer (“CRO”) of TXSE will have general supervision over TXSE’s regulatory operations, including responsibility for overseeing TXSE’s surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another SRO to which TXSE is a party.<sup>118</sup> The Regulatory Oversight Committee, in consultation with the CEO of TXSE, will be responsible for establishing the goals, assessing the performance, and fixing the compensation of the CRO and for recommending personnel actions involving the CRO and senior regulatory personnel.<sup>119</sup>

#### 4. Regulatory Funding and Services

As a prerequisite for the Commission’s granting of an exchange’s application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act.<sup>120</sup> Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and rules thereunder and

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<sup>116</sup> See TXSE LLC Agreement, Article IV, Section 6(a).

<sup>117</sup> See id.

<sup>118</sup> See TXSE LLC Agreement, Article VI, Section 5.

<sup>119</sup> See TXSE LLC Agreement, Article IV, Section 6(a). To the extent that the CEO of TXSE has any indirect supervisory responsibility for the role or function of the CRO, including but not limited to, implementation of the budget for the regulatory function or regulatory personnel matters, the Regulatory Oversight Committee will take all steps reasonably necessary to ensure that the CEO does not compromise the regulatory autonomy and independence of the CRO or the regulatory function. See id.

<sup>120</sup> See 15 U.S.C. 78f(b)(1).

the rules of the exchange.<sup>121</sup> The discussion below summarizes how TXSE proposes to conduct and structure its regulatory operations.

a. Regulatory Funding

To help ensure that TXSE has and will continue to have adequate funding to be able to meet its responsibilities under the Act, TXSE states that, if the Commission approves TXSE's application for registration as a national securities exchange, TXSE Group will allocate sufficient assets to TXSE to enable TXSE's operation.<sup>122</sup> Specifically, TXSE represents that TXSE Group will make a cash contribution to TXSE of \$5,000,000, "in addition to any previously-provided in-kind contributions, such as legal, regulatory, and infrastructure-related services."<sup>123</sup> TXSE also represents that such cash and in-kind contributions from TXSE Group will be adequate to operate TXSE, including the regulation of TXSE,<sup>124</sup> and that TXSE and TXSE Group will enter into a written agreement that requires TXSE Group to provide adequate funding over time for the TXSE's operations, including the regulation of TXSE.<sup>125</sup>

Further, any "Regulatory Funds" received by TXSE will not be used for non-regulatory purposes or distributed to TXSE Group, but rather will be applied to fund the regulatory operations of TXSE (including surveillance and enforcement activities), or, as applicable, used to

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<sup>121</sup> See id. See also Section 19(g) of the Act, 15 U.S.C. 78s(g).

<sup>122</sup> See Form 1, Exhibit I.

<sup>123</sup> See Form 1, Exhibit I.

<sup>124</sup> See Form 1, Exhibit I.

<sup>125</sup> See Form 1, Exhibit I. TXSE represents that this agreement will provide that TXSE receive all fees, including regulatory fees and trading fees, payable by TXSE's members, as well as any funds received from any applicable market data fees and tape revenue, and will further provide that TXSE Group will reimburse TXSE for its costs and expenses to the extent the TXSE's assets are insufficient to meet its costs and expenses. See id.

pay restitution and disgorgement to customers.<sup>126</sup> Any excess non-regulatory funds, as solely determined by TXSE, will be remitted to TXSE Group in accordance with the TXSE LLC Agreement.<sup>127</sup>

b. Regulatory Contract with the Financial Industry Regulatory Authority (“FINRA”)

Although TXSE will be an SRO with all of the attendant regulatory obligations under the Act, it has represented to the Commission that it intends to enter into a regulatory services agreement (“RSA”) with FINRA, under which FINRA as a regulatory services provider will perform certain regulatory functions on TXSE’s behalf.<sup>128</sup> Specifically, TXSE expects that such services will include performance of investigation, disciplinary, and hearing services.<sup>129</sup> Notwithstanding the RSA, TXSE will retain legal responsibility for the regulation of its members and its market and the performance of FINRA as its regulatory services provider. Because TXSE anticipates entering into an RSA with FINRA, it has not made provisions to fulfill the regulatory services that will be undertaken by FINRA. Accordingly, the Commission is conditioning the operation of TXSE on a final RSA that specifies the services that will be provided to TXSE.

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<sup>126</sup> See TXSE LLC Agreement, Article IX, Section 4. Article I of the TXSE LLC Agreement defines “Regulatory Funds” as “fees, fines, or penalties derived from the regulatory operations of [TXSE],” but such term does not include “revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of [TXSE], even if a portion of such revenues are used to pay costs associated with the regulatory operations of [TXSE].” This definition is consistent with the rules of other SROs. See, e.g., MIAx Sapphire By-Laws, Article IX, Section 9.4; GIX LLC Agreement, Article XVII, Section 17.04(b); MX2 LLC Agreement, Article XVII, Section 17.4(b); 24X LLC Agreement, Article XI, Section 11.4(b); MEMX LLC Agreement, Article XVII, Section 17.4(b); LTSE Bylaws, Article I(bb); Amended and Restated By-Laws of MIAx Exchange, Article 1(ll); By-Laws of NASDAQ PHLX LLC, Article I(ii); and By-Laws of NASDAQ BX, Inc., Article I(ii).

<sup>127</sup> See Form 1, Exhibit I.

<sup>128</sup> See Form 1, Exhibit L. See also TXSE Rule 8.001(d).

<sup>129</sup> See Form 1, Exhibit L.

It is consistent with the Act for TXSE to contract with FINRA to perform certain examination, enforcement, and disciplinary functions.<sup>130</sup> These functions are fundamental elements of a regulatory program and constitute core self-regulatory functions. FINRA has the expertise and experience to perform these functions for TXSE.<sup>131</sup> However, TXSE, unless relieved by the Commission of its responsibility, bears the self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on TXSE's behalf.<sup>132</sup> In performing these regulatory functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of TXSE to perform its regulatory functions.<sup>133</sup> Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for TXSE, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws or rules thereunder by TXSE.<sup>134</sup>

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<sup>130</sup> For example, GIX, MX2, 24X, MEMX, LTSE, IEX, MIAX Exchange, MIAX PEARL, LLC, Nasdaq MRX, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc. ("Cboe EDGX"), and Cboe BZX Exchange, Inc. ("Cboe BZX") have entered into RSAs with FINRA.

<sup>131</sup> See, e.g., GIX Order, supra note 50; MX2 Order, supra note 50; 24X Order, supra note 50; MEMX Order, supra note 50; LTSE Order, supra note 50; Nasdaq Order, supra note 50; IEX Order, supra note 63; and DirectEdge Exchanges Order, supra note 76. The Commission is not approving the RSA or any of its specific terms.

<sup>132</sup> See 15 U.S.C. 78s(g)(1).

<sup>133</sup> For example, if failings by FINRA have the effect of leaving TXSE in violation of any aspect of TXSE's self-regulatory obligations, TXSE would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. See, e.g., GIX Order, supra note 50; MX2 Order, supra note 50; 24X Order, supra note 50; MEMX Order, supra note 50; LTSE Order, supra note 50; Nasdaq Order, supra note 50; BATS Order, supra note 50; IEX Order, supra note 63; and DirectEdge Exchanges Order, supra note 76.

<sup>134</sup> See, e.g., GIX Order, supra note 50; MX2 Order, supra note 50; 24X Order, supra note 50; MEMX Order, supra note 50; LTSE Order, supra note 50; Nasdaq Order, supra note 50; and IEX Order, supra note 63.

c. Rule 17d-2 Agreements

Section 19(g)(1) of the Act,<sup>135</sup> among other things, requires every SRO registered as either a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO's own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members.<sup>136</sup> Rule 17d-2 of the Act permits SROs to propose joint plans to allocate regulatory responsibilities amongst themselves for their common rules with respect to their common members.<sup>137</sup> These agreements, which must be filed with and declared effective by the Commission, generally cover areas where each SRO's rules substantively overlap, including such regulatory functions as personnel registration and sales practices. For example, the Commission recently declared effective a plan to allocate regulatory responsibilities between FINRA and MEMX pursuant to which FINRA assumes examination and enforcement responsibility for broker-dealers that are members of both FINRA and MEMX with respect to the rules of MEMX that are substantially similar to the applicable rules of FINRA, as well as certain specified provisions of the federal securities laws.<sup>138</sup>

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<sup>135</sup> 15 U.S.C. 78s(g)(1).

<sup>136</sup> 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

<sup>137</sup> See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO ("common members"). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

<sup>138</sup> See Securities Exchange Act Release No. 96101 (Oct. 18, 2022), 87 FR 64280 (Oct. 24, 2022) (File No. 4-762). See also, e.g., Securities Exchange Act Release Nos. 103497 (July 18, 2025) 90 FR 34696 (July 23, 2025) (FINRA/GIX); 103130 (May 27, 2025), 90 FR 23389 (June 2, 2025) (FINRA/24X); 86587 (Aug. 7, 2019), 84 FR 39883 (Aug. 12, 2019) (File No. 4-747) (FINRA/LTSE); 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018) (File No. 4-678) (FINRA/MIAX Exchange/MIAX PEARL); 77321 (Mar. 8, 2016), 81 FR 13434 (Mar. 14, 2016) (File No. 4-697) (FINRA/ISE Mercury, LLC); 73641 (Nov. 19, 2014), 79 FR 70230 (Nov. 25, 2014) (File No. 4-678) (FINRA/MIAX Exchange); 70053 (July 26, 2013), 78 FR 46656 (Aug. 1, 2013) (File No. 4-663) (FINRA/Topaz Exchange n/k/a ISE Gemini, LLC); 59218 (Jan. 8, 2009), 74 FR

A Rule 17d-2 plan that is declared effective by the Commission relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.<sup>139</sup> TXSE has represented to the Commission that it will join all applicable plans, including Rule 17d-2 plans for the allocation of regulatory responsibilities.<sup>140</sup> Similar to other exchanges, the Commission understands from TXSE that it will enter into a bilateral Rule 17d-2 agreement covering common members of TXSE and FINRA. This agreement will allocate to FINRA regulatory responsibility, with respect to common members, for specified regulatory and enforcement matters arising out of specified common rules and specified provisions of the Act and the rules and regulations thereunder. In addition, the Commission is conditioning operation of TXSE as an exchange on TXSE first joining the applicable multilateral Rule 17d-2 plans, including the multi-party Rule 17d-2 plan for the allocation of regulatory responsibilities with respect to certain Regulation NMS and Consolidated Audit Trail rules and the multi-party Rule 17d-2 plan for the surveillance, investigation, and enforcement of common insider trading rules.<sup>141</sup>

Because TXSE anticipates entering into these Rule 17d-2 agreements, it has not made provision to fulfill the regulatory obligations that will be undertaken by FINRA and other SROs

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2143 (Jan. 14, 2009) (File No. 4-575) (FINRA/Boston Stock Exchange, Inc. (“BSE”)); 58818 (Oct. 20, 2008), 73 FR 63752 (Oct. 27, 2008) (File No. 4-569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28087 (May 18, 2007) (File No. 4-536) (National Association of Securities Dealers, Inc. (“NASD”) n/k/a FINRA/Chicago Board of Options Exchange, Inc. concerning the CBOE Stock Exchange, LLC); 55367 (Feb. 27, 2007), 72 FR 9983 (Mar. 6, 2007) (File No. 4-529) (NASD/International Securities Exchange, LLC); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4-517) (NASD/Nasdaq).

<sup>139</sup> See Securities Exchange Act Release No. 12935 (Oct. 28, 1976), 41 FR 49091 (Nov. 8, 1977) (Rule 17d-2 Adopting Release).

<sup>140</sup> See Form 1, Exhibit E.

<sup>141</sup> See Securities Exchange Act Release Nos. 63430 (Dec. 3, 2010), 75 FR 76758 (Dec. 9, 2010) (File No. 4-618) (order approving and declaring effective a multiparty 17d-2 plan concerning covered Regulation NMS and Consolidated Audit Trail rules); 58526 (Sept. 12, 2008), 73 FR 54646 (Sept. 22, 2008) (File No. 4-566) (order approving and declaring effective a multiparty 17d-2 plan for insider trading rules).

under these agreements with respect to common members.<sup>142</sup> Accordingly, the Commission is conditioning the operation of TXSE on approval by the Commission of a Rule 17d-2 agreement that allocates the above specified matters to FINRA, and the approval of an amendment to the existing multi-party Rule 17d-2 plans specified above to add TXSE as a party.

### C. TXSE Trading System

TXSE will operate a fully automated electronic order book and will not maintain or operate a physical trading floor. Only Members of TXSE and entities that enter into market access arrangements with members (collectively, “Users”<sup>143</sup>) will have access to the TXSE system.<sup>144</sup> Users will be able to electronically submit orders to buy or sell securities traded on the Exchange through a variety of systems.<sup>145</sup> TXSE will allow firms to register as market makers with affirmative and negative market making obligations.<sup>146</sup>

Users may submit orders to the Exchange as Limit Orders (including Market Maker Peg Orders), Market Orders, or Pegged Orders.<sup>147</sup> Orders must be submitted with one of the following time-in-force instructions, as applicable: Immediate-or-Cancel; System; Day; or Regular Hours Only.<sup>148</sup> In addition to these time-in-force instructions, Limit Orders and Pegged

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<sup>142</sup> For common members, the regulatory obligations will be covered by the Rule 17d-2 agreements, and for TXSE members that are not also members of FINRA, the regulatory obligations will be covered by the RSA.

<sup>143</sup> See TXSE Rule 1.005(jj).

<sup>144</sup> To obtain authorized access to the TXSE system, each User must enter into a User Agreement with TXSE. See TXSE Rule 11.003(a).

<sup>145</sup> For a discussion of the means of access to TXSE, see Form 1, Exhibit E-1.

<sup>146</sup> See TXSE Rules 11.015 through 11.018. TXSE’s rules relating to market makers are similar to the rules of other national securities exchanges. See, e.g., MEMX Rules 11.17 through 11.20 and Cboe EDGX Rules 11.17 through 11.20.

<sup>147</sup> See TXSE Rule 11.007. Limit Orders may be designated as Intermarket Sweep Orders. See TXSE Rule 11.007(b)(5). Pegged Orders may be designated as either a Primary Peg, a Midpoint Peg, or a Market Peg. See TXSE Rule 11.007(c). Market Maker Peg Orders are a type of limit order. See TXSE Rule 11.007(e).

<sup>148</sup> See TXSE Rule 11.007(a)(1), (b)(1), and (c)(1).



Orders may also be submitted with a Good ‘til Time instruction.<sup>149</sup> Users may submit Limit Orders with the display instructions of Displayed or Non-Displayed.<sup>150</sup> A Limit Order with a Displayed instruction also may include a Reserve Quantity.<sup>151</sup> Displayed orders will be displayed on an anonymous basis at a specified price.<sup>152</sup> Limit Orders may also include a Display-Price Sliding instruction so orders can be automatically re-priced to comply with Rule 610 of Regulation NMS or Rule 201 of Regulation SHO.<sup>153</sup> Users may also submit Market Maker Peg Orders, which track the national best bid or national best offer within a designated percentage to comply with market maker quotation requirements.<sup>154</sup> Orders may be entered as a Round Lot, Odd Lot, or Mixed Lot.<sup>155</sup> In addition, a User may attach a Minimum Execution Quantity instruction to a Limit Order with a time-in-force of Immediate-or-Cancel or a Market Order with a time-in-force of Immediate-or-Cancel.<sup>156</sup> Limit Orders may also be designated as Intermarket Sweep or Post Only.<sup>157</sup> All orders will be designated as Book Only.<sup>158</sup> TXSE’s proposed order types and instructions are similar to order types and instructions approved by the Commission and currently available on other national securities exchanges.<sup>159</sup>

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<sup>149</sup> See TXSE Rule 11.007(b)(1) and (c)(1).

<sup>150</sup> See TXSE Rule 11.007(b)(3). Market Orders and Pegged Orders are not eligible for display. See TXSE Rules 11.007(a)(3) and 11.007(c)(3).

<sup>151</sup> See TXSE Rule 11.007(b)(4).

<sup>152</sup> See TXSE Rule 11.009(b).

<sup>153</sup> See TXSE Rule 11.006(j).

<sup>154</sup> See TXSE Rule 11.007(e). Market Maker Peg Orders are always displayed. See id.

<sup>155</sup> See Form 1, Exhibit E, and TXSE Rule 11.006(q) and 11.007(a) through (c).

<sup>156</sup> See TXSE Rules 11.007(a)(2), (b)(2), and (c)(2).

<sup>157</sup> See TXSE Rule 11.007(b)(5).

<sup>158</sup> See TXSE Rule 11.007.

<sup>159</sup> See, e.g., MEMX Rules 11.6 and 11.8; LTSE 11.190(a); and Cboe EDGX Rules 11.6 and 11.8.

TXSE will offer a Random Replenishment instruction in connection with a Limit Order submitted with a Reserve Quantity instruction.<sup>160</sup> In addition to randomizing the size of the refreshed displayed portion, this instruction will allow the User to elect to have the TXSE system randomly replenish the displayed replenishment quantity at different time intervals ranging up to one millisecond following each execution that triggers replenishment.<sup>161</sup>

The TXSE system will continuously and automatically match orders pursuant to price/time priority. The highest-priced order to buy (lowest-priced order to sell) will have priority over all other orders to buy (sell) in all cases. For equally-priced trading interest in time priority, TXSE will give first priority to the portion of a Limit Order with a displayed instruction (including a Market Maker Peg Order), second priority to Limit Orders with a non-displayed instruction (including the Reserve Quantity of Limit Orders), and third to Orders with a Peg instruction (i.e., Primary Peg Order, Midpoint Peg Order, Market Peg Order).<sup>162</sup> With respect to the price of executions that would occur on TXSE, the TXSE system is designed to comply with the order protection requirements of Rule 611 of Regulation NMS<sup>163</sup> by requiring that, for any execution to occur on TXSE during regular trading hours, the price must be equal to, or better than, the Protected NBBO, unless an exception to Rule 611 applies.<sup>164</sup> Orders may be executed on the Exchange during the Regular Market Session or during Pre- and Post-Market Sessions;<sup>165</sup>

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<sup>160</sup> See TXSE Rule 11.006(k)(1).

<sup>161</sup> See TXSE Rule 11.006(k)(1)(A).

<sup>162</sup> See TXSE Rule 11.008. See also Form 1, Exhibit E-1. Orders in each category (i.e., Limit Orders with a displayed instruction, Limit Orders with a non-displayed instruction, and Orders with a Pegged Instruction) will generally be ranked in priority based on the time such orders were initially received by the System.

<sup>163</sup> 17 CFR 242.611.

<sup>164</sup> See TXSE Rules 1.005(x) (defining “Protected NBBO”) and 11.009(a)(2).

<sup>165</sup> TXSE’s Regular Trading Hours will be from 9:30am ET to 4pm ET, its Pre-Market Session will run from 8am ET to 9:30am ET, and its Post-Market Session will run from 4pm ET to 5pm ET. See TXSE Rules 1.005(z), (v) and (u).

however, some order types and functionality are available only during the Regular Market Session.<sup>166</sup>

In addition, TXSE's rules are designed to address locked and crossed markets, as required by Rule 610(e) of Regulation NMS,<sup>167</sup> in that they are designed not to disseminate interest that would lock or cross a protected quote, to require Users to reasonably avoid displaying interest that locks or crosses any protected quotation, and are reasonably designed to assure the reconciliation of locked or crossed interest.<sup>168</sup>

Initially, TXSE will not offer any outbound routing functionality;<sup>169</sup> thus, as noted above, all orders submitted to TXSE will be treated as Book Only,<sup>170</sup> though Limit Orders may also include the execution instructions of Intermarket Sweep Order, if appropriate.<sup>171</sup>

The Commission finds that TXSE's trading rules are consistent with the Act and, in particular, the Section 6(b)(5) requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.<sup>172</sup>

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<sup>166</sup> See TXSE Rule 11.007(a) through (c), (e).

<sup>167</sup> 17 CFR 242.610(e).

<sup>168</sup> See TXSE Rule 11.009(f). See also TXSE Rule 11.006(a) (allowing Users to attach a Cancel Back instruction to immediately cancel an order when, if displayed, it would create a violation of Rule 610(d) of Regulation NMS, 17 CFR 242.610(d)), and TXSE Rules 11.006(j) and 11.007(b)(8) (relating to price sliding functionality to avoid violations of Rule 610(e) of Regulation NMS, 17 CFR 242.610(e)).

<sup>169</sup> See Form 1, Exhibit E, Section 2(b).

<sup>170</sup> See TXSE Rule 11.007.

<sup>171</sup> See TXSE Rule 11.007(b)(5).

<sup>172</sup> See 15 U.S.C. 78f(b)(5). TXSE's trading rules, including its rules relating to market makers, order types and instructions, execution, and opening processes, are similar to existing exchanges' trading rules. See, e.g., Chapter XI of the MEMX rulebook and Chapter XI of the Cboe BZX rulebook.

As a national securities exchange, TXSE will be a trading center whose quotations can be “automated quotations” under Rule 600(b)(6).<sup>173</sup> TXSE has designed itself to qualify by being an “automated trading center” under Rule 600(b)(7) whose best-priced, displayed quotation will be a “protected quotation” under Rules 600(b)(81) and 600(b)(82), and for purposes of Rule 611.<sup>174</sup>

To meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, other trading centers will be required to have sufficient notice of new protected quotations, as well as all necessary information and technical specifications.<sup>175</sup> It would be a reasonable policy and procedure under Rule 611(a) to require that industry participants begin treating TXSE’s best bid and best offer as a protected quotation as soon as possible but no later than 90 days after the date of this order, or such later date as TXSE begins operation as a national securities exchange. The Commission has taken the same position with other new equities exchanges.<sup>176</sup>

#### D. Discipline and Oversight of Members

As stated above, one prerequisite for the Commission’s grant of an exchange’s application for registration is that a proposed exchange must be so organized and have the capacity to be able to carry out the purposes of the Act.<sup>177</sup> Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with the federal securities laws and rules thereunder and the rules of the exchange.<sup>178</sup> As also stated above,

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<sup>173</sup> See TXSE Rule 11.009(b).

<sup>174</sup> See 17 CFR 242.600(b)(81) through (82) and 17 CFR 242.611.

<sup>175</sup> See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006) (File No. S7-10-04) (extending the compliance dates for Rule 610 and Rule 611 of Regulation NMS under the Act).

<sup>176</sup> See, e.g., GIX Order, supra note 50, at 16216; MX2 Order, supra note 50, at 12600; MEMX Order, supra note 50, at 27461; BATS Order, supra note 50, at 49505; and DirectEdge Exchanges Order, supra note 76, at 13163.

<sup>177</sup> See 15 U.S.C. 78f(b)(1).

<sup>178</sup> See id.

pursuant to an RSA with FINRA, FINRA will perform many of the initial disciplinary processes on behalf of TXSE.<sup>179</sup> For example, FINRA will investigate potential securities laws violations, issue complaints, and conduct hearings pursuant to TXSE rules. Appeals from disciplinary decisions will be heard by the TXSE Appeals Committee,<sup>180</sup> and the TXSE Appeals Committee's decision shall be final unless the Exchange Board on its own initiative orders review of a disciplinary decision.<sup>181</sup>

TXSE's rules provide that the Exchange has disciplinary jurisdiction over its Members so that it can enforce its Members' compliance with its rules and the federal securities laws and rules.<sup>182</sup> The Exchange's rules also permit TXSE to sanction Members for violations of its rules and violations of the federal securities laws and rules by, among other things, expelling or suspending Members, limiting Members' activities, functions, or operations, fining or censuring Members, or suspending or barring a person from being associated with a Member, or any other fitting sanction.<sup>183</sup> TXSE's rules also provide for the imposition of fines for certain minor rule violations in lieu of commencing disciplinary proceedings.<sup>184</sup> Accordingly, as a condition to the operation of TXSE, a Minor Rule Violation Plan ("MRVP") filed by TXSE under Act Rule 19d-1(c)(2) must be declared effective by the Commission.<sup>185</sup>

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<sup>179</sup> See supra notes 128-129 and accompanying text. See also TXSE Rule 8.001(d) (stating that TXSE and FINRA are parties to a regulatory services agreement, pursuant to which FINRA will perform certain functions described in Chapter 8 on behalf of TXSE).

<sup>180</sup> See TXSE Rule 8.010(b).

<sup>181</sup> See TXSE Rule 8.010(b) and (c).

<sup>182</sup> See generally TXSE Rule Chapters 7 and 8.

<sup>183</sup> See TXSE Rule 8.001(a).

<sup>184</sup> See TXSE Rule 8.015.

<sup>185</sup> 17 CFR 240.19d-1(c)(2).

The Commission finds that TXSE’s rules concerning its disciplinary and oversight programs are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) of the Act<sup>186</sup> in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of TXSE provide it with the ability to comply, and with the ability to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of TXSE.<sup>187</sup>

E. Listing and Trading Securities on TXSE<sup>188</sup>

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

Once TXSE begins operations as a national securities exchange, a security will be considered for listing on TXSE only if such security is registered pursuant to Section 12(b) of the Act<sup>189</sup> or such security is subject to an exemption.<sup>190</sup> An issuer may register a security pursuant to Section 12(b) by submitting to TXSE a listing application that provides certain required information.<sup>191</sup> The Exchange will review the listing application and, if the listing application is approved, will certify to the Commission that it has approved the security for listing and

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<sup>186</sup> 15 U.S.C. 78f(b)(6) and (b)(7).

<sup>187</sup> See 15 U.S.C. 78f(b)(1).

<sup>188</sup> While commenters were generally supportive of TXSE’s proposal to establish a listing market (see, e.g., TBA Letter; BDA Letter at 1; Fortress Letter at 1; Committee on Capital Markets Letter at 1-2), some commenters were specifically supportive of TXSE’s proposed listing standards (see, e.g., Letter from Cromwell Coulson, President and CEO, OTC Markets Group Inc., dated July 29, 2025 at 1; ASA Letter), or were specifically supportive of TXSE expanding the market for exchange-traded products (see, e.g., Pate Letter at 2; Gramm Letter at 2).

<sup>189</sup> 15 U.S.C. 78l(b).

<sup>190</sup> 15 U.S.C. 78l(c); TXSE Rule 16.203.

<sup>191</sup> 15 U.S.C. 78l(b); TXSE Rule 16.202. Prior to submitting a listing application to TXSE, the issuer would be required to participate in a free confidential pre-application eligibility review, in which the TXSE Exchange will determine whether the issuer meets its listing criteria and is eligible to submit a listing application. See TXSE Rule 16.201.

registration.<sup>192</sup> Registration of the security will become effective thirty days after the receipt of such certification by the Commission or within a shorter period of time as the Commission may determine.<sup>193</sup> Once registration is effective the security is eligible for listing on TXSE.<sup>194</sup>

## 2. Initial and Continuing Listing Standards

TXSE's proposed initial and continuing listing standards for securities to be listed and traded on the Exchange are substantially similar to the current rules for the Nasdaq Global Select Market of Nasdaq, NYSE, or IEX.<sup>195</sup> The Commission has previously found that the initial and continuing listing standards of Nasdaq, NYSE, and IEX are consistent with the Act.<sup>196</sup> TXSE's proposed initial and continuing listing standards are consistent with the requirements of the Act. With respect to the standards relating to the listing and delisting of companies, including procedures and prerequisites for initial and continued listing on TXSE, obligations of security issuers listed on TXSE, as well as rules describing the application and qualification process,<sup>197</sup>

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<sup>192</sup> See TXSE Rule 16.203(f); 15 U.S.C. 78l(d).

<sup>193</sup> 15 U.S.C. 78l(d).

<sup>194</sup> See TXSE Rule 14.203(f); 15 U.S.C. 78l(d).

<sup>195</sup> See Nasdaq Rule 5000 series; NYSE Listed Company Manual; IEX Chapters 14 and 16; TXSE Rule Chapters 16 and 17. In addition, TXSE proposed a Confidential Pre-Application Review of Eligibility for its proposed listing standards, which is based on the equivalent rules of IEX and the New York Stock Exchange LLC ("NYSE"). See TXSE Rule 16.201; see also IEX Rule 14.201 and NYSE Listed Company Manual Sections 101 and 104 (providing for a free confidential review of the eligibility for listing of any company that requests such a review and provides the necessary documents).

<sup>196</sup> See Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (File No. 10-131) (approving the application of Nasdaq to become a registered national securities exchange); IEX Order, *supra* note 63; NYSE Listed Company Manual Sections 1, 7, and 8. See also Securities Exchange Act Release Nos. 66648 (Mar. 23, 2012), 77 FR 19428 (Mar. 30, 2012) (SR-NASDAQ-2012-013) (approving the adoption of listing rules relating to certain derivative securities products); 48745 (Nov. 4, 2003), 68 FR 64154 (Nov. 12, 2003) (SR-NYSE-2002-33, SR-NASD-2002-77, SR-NASD-2002-80, SR-NASD-2002-138, SR-NASD-2002-139, and SR-NASD-2002-141) (order approving rules relating to corporate governance of listed companies, including rules relating to the internal audit function) ("NYSE Listing Rules Order"); 51813 (June 9, 2005), 70 FR 35484 (SR-NYSE-2004-20) (order approving amendments to NYSE's original and continued listing standards).

<sup>197</sup> See TXSE Rules Chapter 16. The requirements relating to the listing of companies are substantially similar to those of Nasdaq or NYSE. See Nasdaq Rule 5000 series; NYSE Listed Company Manual Sections 1, 7, and 8. TXSE's general procedures and prerequisites for initial and continued listing are substantially

TXSE's proposed listing rules for securities are substantially similar to those of Nasdaq, NYSE or IEX. TXSE Rule 16.201, which is substantially similar to the analogous rules of IEX and NYSE,<sup>198</sup> requires a company seeking the initial listing of one or more classes of securities on TXSE to participate in a free confidential pre-application eligibility review to determine whether the company meets the TXSE's listing criteria and, if, upon completion of this review, TXSE determines that a company is eligible for listing, TXSE will notify that company in writing that it has been cleared to submit an original listing application. In addition, with respect to the standards relating to other securities, including securities of exchange-traded funds and other exchange-traded derivative securities products, TXSE's proposed listing rules are substantially similar to those of Nasdaq.<sup>199</sup>

### 3. Corporate Governance Standards

TXSE's proposed corporate governance standards in connection with securities to be listed and traded on the Exchange are substantially similar to the current rules of Nasdaq and NYSE.<sup>200</sup> The Commission has previously found that the corporate governance standards for listed issuers of Nasdaq, NYSE, and IEX are consistent with the Act.<sup>201</sup> The Commission finds

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similar to those of Nasdaq, while the initial and continued listing requirements (including numerical standards) are substantially similar to those of NYSE. See id. TXSE's rules governing the process for delisting are substantially similar to those of IEX. See TXSE Rule 16.500 et seq.; IEX Rule 14.500 et seq.

<sup>198</sup> See supra note 196 (referencing TXSE Rule 16.201, IEX Rule 14.201, and NYSE Listed Company Manual Sections 101 and 104).

<sup>199</sup> See TXSE Rules Chapter 17; see also the Nasdaq Rule 5000 series.

<sup>200</sup> See Nasdaq Rule 5600 et seq.; NYSE Listed Company Manual Section 303A et seq. TXSE Rule 16.414 requiring listed companies to maintain an internal audit function is substantially similar to IEX Rule 14.414 and NYSE Listed Company Manual Section 303A.07(c) (each requiring listed companies to maintain an internal audit function to provide management and the audit committee with ongoing assessments of the listed company's risk management processes and system of internal control). TXSE Rule 16.407 providing exemptions from certain governance requirements is substantially similar to Nasdaq Rule 5615 and IEX Rule 14.407.

<sup>201</sup> See supra note 196. TXSE proposed to adopt a requirement for listed issuers to have an internal audit function that is substantially similar to IEX's and NYSE's. See supra note 200 (referencing NYSE Listed



that TXSE’s proposed corporate governance listing standards for listed issuers contained in TXSE’s proposed rules are consistent with Section 6(b)(5) of the Act and satisfy the requirements of Section 10A(m) of the Act and Rule 10A-3 thereunder.<sup>202</sup> TXSE’s corporate governance standards for listed issuers are designed to promote independent and objective review and oversight of the accounting and auditing practices of listed issuers and to enhance audit committee independence, authority, and responsibility by implementing the standards set forth in Rule 10A-3.

#### 4. Trading Pursuant to Unlisted Trading Privileges

TXSE proposes to trade securities pursuant to unlisted trading privileges (“UTP”). TXSE Rule 14.001 establishes the Exchange’s authority to trade securities on a UTP basis. TXSE Rule 14.001(a) provides that TXSE may extend UTP to any security that is an NMS stock that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with Section 12(f) of the Act.<sup>203</sup> That rule further provides that any such security would be subject to all TXSE rules applicable to trading on TXSE, unless otherwise noted.

TXSE Rule 14.001(b) establishes additional rules for trading of UTP Exchange Traded Products, which are defined in TXSE Rule 1.005(II). TXSE Rule 14.001(b)(1) provides that TXSE will distribute an information circular prior to the commencement of trading in a UTP Exchange Traded Product that generally would include the same information as the information circular provided by the listing exchange, including (a) the special risks of trading the Exchange Traded Product, (b) the Exchange’s rules that would apply to the Exchange Traded Product; (c)

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Company Manual Section 303A.07(c); IEX Rule 14.414; TXSE Rule 16.414. See also NYSE Listing Rules Order, supra note 196; IEX Order, supra note 63.

<sup>202</sup> See 15 U.S.C. 78f(b)(5); 15 U.S.C. 78j-1(m); 17 CFR 240.10A-3.

<sup>203</sup> 15 U.S.C. 78l(f).

information about the dissemination of value of the underlying assets or indices; and (d) the applicable trading hours for UTP Exchange Traded Products and risks of trading in the Pre-Market and Post-Market Sessions due to the lack of calculation or dissemination of the underlying index value, the intraday indicative value or a similar value. TXSE Rule 14.001(b)(2) establishes certain requirements for members that have customers that trade UTP Exchange Traded Products.<sup>204</sup> TXSE Rule 14.001(b)(4) also establishes certain requirements for any member registered as a market maker in a UTP Exchange Traded Product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities.<sup>205</sup> TXSE Rule 14.001(b)(6) provides that the Exchange will enter into comprehensive surveillance sharing agreements with markets that trade components of the index or portfolio on which the UTP Exchange Traded Product is based to the same extent as the listing exchange's rules require the listing exchange to enter into comprehensive surveillance sharing agreements with such markets.

The Commission finds that the Exchange's proposed approach to the trading of securities on a UTP basis, as set forth in TXSE Rule 14.001, is consistent with Section 12(f) of the Act and Rule 12f-5 thereunder.<sup>206</sup> Rule 12f-5 under the Act requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the

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<sup>204</sup> TXSE Rule 14.001(b)(2)(A) states that TXSE Rule 14.001(b)(2) applies to UTP Exchange Traded Products that are the subject of an order by the Commission exempting the series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940, and are not otherwise subject to prospectus delivery requirement under the Securities Act of 1933. TXSE Rule 14.001(b)(2)(B) requires members to provide a written description of the terms and characteristics of UTP Exchange Traded Products to purchasers of such securities, not later than the time of confirmation of the first transaction, and with any sales materials relating to UTP Exchange Traded Products. TXSE Rule 14.001(b)(2)(C) requires members to provide a prospectus to a customer requesting a prospectus.

<sup>205</sup> TXSE Rule 14.001(b)(5) provides that Market Makers in a UTP Exchange Traded Product that is a Commodity-Related Security shall comply with TXSE Rule 17.127.

<sup>206</sup> 15 U.S.C. 78l(f); 17 CFR 240.12f-5.

class or type of security to which the exchange extends unlisted trading privileges.<sup>207</sup> TXSE Rule 14.001 includes a provision that any security traded UTP on the Exchange “shall be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted.” The provisions in TXSE Rule 14.001 are substantively the same as the existing rules of other national securities exchanges.<sup>208</sup> Accordingly, pursuant to Section 12(f) of the Act and Rule 12f-5 thereunder, TXSE will be permitted to extend unlisted trading privileges to securities of the same class, subject to the trading rules of the Exchange.

F. Section 11(a) of the Act

Section 11(a)(1) of the Act<sup>209</sup> prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, “covered accounts”), unless an exception applies. Rule 11a2-2(T) under the Act,<sup>210</sup> known as the “effect versus execute” rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;<sup>211</sup> (iii) may not

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<sup>207</sup> See 17 CFR 240.12f-5. See also Securities Exchange Act Release No. 35737 (Apr. 21, 1995), 60 FR 20891 (Apr. 28, 1995) (File No. S7-4-95) (adopting Rule 12f-5 under the Act).

<sup>208</sup> See, e.g., LTSE Rule 14.350 and MEMX Rule 14.1.

<sup>209</sup> 15 U.S.C. 78k(a)(1).

<sup>210</sup> 17 CFR 240.11a2-2(T).

<sup>211</sup> This prohibition also applies to associated persons. See 15 U.S.C. 78f(b)(8). The member may, however, participate in clearing and settling the transaction. See Securities Exchange Act Release No. 14563 (Mar. 14, 1978), 43 FR 11542 (Mar. 17, 1978) (regarding the NYSE’s Designated Order Turnaround System (“1978 Release”)).

be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.

In a letter to the Commission, TXSE requested that the Commission concur with TXSE's conclusion that Exchange Members that enter orders into the TXSE trading system satisfy the conditions of Rule 11a2-2(T).<sup>212</sup> For the reasons set forth below, Exchange Members entering orders into the TXSE trading system could satisfy the conditions of Rule 11a2-2(T).

First, Rule 11a2-2(T) requires that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission condition is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.<sup>213</sup> TXSE has represented that it does not have a physical trading floor, and the TXSE trading system will receive orders from Exchange Members electronically through remote terminals or computer-to-computer interfaces.<sup>214</sup> The TXSE trading system satisfies this off-floor transmission condition.

Second, Rule 11a2-2(T) requires that the member and any associated person not participate in the execution of its order after the order has been transmitted. TXSE represented that at no time following the submission of an order is an Exchange Member or an associated

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<sup>212</sup> See letter from Jeff Brown, Chief Legal Officer and General Counsel, TXSE, dated Sept. 5, 2025 ("TXSE 11(a) Letter").

<sup>213</sup> See, e.g., Nasdaq Order, *supra* note 50; Securities Exchange Act Release Nos. 61419 (Jan. 26, 2010), 75 FR 5157 (Feb. 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (Dec. 23, 2008), 73 FR 80468 (Dec. 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (Mar. 12, 2008), 73 FR 14521 (Mar. 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving Nasdaq Options Market options trading); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility); and 15533 (Jan. 29, 1979), 44 FR 6084 (Jan. 31, 1979) ("1979 Release").

<sup>214</sup> See TXSE 11(a) Letter, *supra* note 212, at 3.

person of the Exchange Member able to acquire control or influence over the result or timing of the order's execution.<sup>215</sup> According to TXSE, the execution of an Exchange Member's order is determined solely by what quotes and orders are present in the system at the time the Exchange Member submits the order, and the order priority based on the TXSE rules.<sup>216</sup> Accordingly, an Exchange Member and its associated persons do not participate in the execution of an order submitted to the TXSE trading system.<sup>217</sup>

Third, Rule 11a2-2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this condition is satisfied when automated exchange facilities, such as the TXSE trading system, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.<sup>218</sup> TXSE has represented that the design of the TXSE trading system ensures that no Exchange Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to TXSE.<sup>219</sup> Based on TXSE's representation, the TXSE trading system satisfies this condition.

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<sup>215</sup> See id. The Commission has stated that the non-participation condition is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See 1978 Release, supra note 211 (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

<sup>216</sup> See TXSE 11(a) Letter, supra note 212, at 3.

<sup>217</sup> See, e.g., BATS Order, supra note 50, at 49505; and DirectEdge Exchanges Order, supra note 76, at 13164.

<sup>218</sup> See, e.g., BATS Order, supra note 50, at 49505; and DirectEdge Exchanges Order, supra note 76, at 13164. In considering the operation of automated execution systems operated by an exchange, the Commission stated that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution condition of Rule 11a2-2(T). See 1979 Release, supra note 213.

<sup>219</sup> See TXSE 11(a) Letter, supra note 212, at 4.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.<sup>220</sup> TXSE Members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.<sup>221</sup>

#### IV. Exemption from Section 19(b) of the Act With Regard to Certain Rules Incorporated by Reference

TXSE proposes to incorporate by reference certain FINRA rules and Nasdaq Options Market LLC ("NOM") rules as TXSE rules.<sup>222</sup> Thus, for those TXSE rules, Exchange Members

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<sup>220</sup> See, e.g., BATS Order, *supra* note 50, at 49505; and DirectEdge Exchanges Order, *supra* note 76, at 13164. In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, *supra* note 211 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

<sup>221</sup> TXSE represented that it will advise its membership through the issuance of an Information Circular that those members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption. See TXSE 11(a) Letter, *supra* note 212, at 4.

<sup>222</sup> See Letter from Jeff Brown, Chief Legal Officer and General Counsel, TXSE, dated Sept. 5, 2025 ("Exemption Request Letter"). TXSE proposes to incorporate by reference the following FINRA rules and NOM rules: (1) FINRA Rule 2210 (Communications with the Public), via TXSE Rule 3.005 (Communications with the Public); (2) FINRA Rule 2241 (Research Analysts and Research Reports), via TXSE Rule 3.013(b)(3) (Payments Involving Publications that Influence the Market Price of Security); (3) FINRA Rule 4512(c) (Consolidated Audit Trail Definitions), via TXSE Rule 4.005(d) (Consolidated Audit Trail definitions); (4) FINRA Rule 2268 (Requirements when using Predispute Arbitration Agreements for Customer Accounts), via TXSE Rule 9.003 (Predispute Arbitration Agreements); (5) FINRA Rule 5320.03 (Riskless Principal Exception), via TXSE Rule 11.019(a)(2) (Retail Orders); (6) FINRA Rule 5270 (Front Running of Block Transactions), via TXSE Rules 12.014(a) and (b) (Front Running of Block Transactions); (7) NOM Rules at Options 4A, Section 4 (Designation of Narrow-Based and Micro-Narrow-Based Index Options), via TXSE Rule 17.111(a)(4)(A) and (B) (Trading of Certain Derivative Securities).

will comply with the TXSE rule by complying with the FINRA or NOM rule referenced therein. In connection with its proposal to incorporate FINRA and NOM rules by reference, TXSE requested, pursuant to Rule 0-12,<sup>223</sup> an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those TXSE rules that are effected solely by virtue of a change to a cross-referenced FINRA or NOM rule.<sup>224</sup> TXSE represents in its letter that, as a condition to the exemption, it will provide written notice to its Members whenever a proposed rule change to a FINRA or NOM rule that is incorporated by reference is proposed and whenever any such proposed change is approved by the Commission or otherwise becomes effective.<sup>225</sup>

Using its authority under Section 36 of the Act,<sup>226</sup> the Commission is hereby granting TXSE's request for an exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that TXSE proposes to incorporate by reference.<sup>227</sup> This exemption is conditioned upon TXSE providing written notice to its Members whenever FINRA or Nasdaq proposes to change a rule that TXSE has incorporated by reference. This exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and

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<sup>223</sup> See 17 CFR 240.0-12.

<sup>224</sup> See Exemption Request Letter, supra note 222.

<sup>225</sup> See Exemption Request Letter, supra note 222, at 2. TXSE will provide such notice through a posting on the same website location where TXSE will post its own rule filings pursuant to Rule 19b-4 under the Act, within the required time frame. The website posting will include a link to the location on the FINRA website where FINRA's proposed rule change is posted. See id.

<sup>226</sup> 15 U.S.C. 78mm.

<sup>227</sup> The Commission previously exempted other exchanges from the requirement to file proposed rule changes under Section 19(b) of the Act. See, e.g., GIX Order, supra note 50; MX2 Order, supra note 50; 24X Order, supra note 50; MEMX Order, supra note 50; MIAX Order, supra note 50; MIAX Pearl Order, supra note 50; BATS Order, supra note 50; IEX Order, supra note 63; ISE Mercury Order, supra note 65; and DirectEdge Exchanges Order, supra note 76.

SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rules of more than one SRO.

V. Conclusion

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

IT IS FURTHERED ORDERED that operation of TXSE is conditioned on the satisfaction of the requirements below:

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

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

C. Minor Rule Violation Plan. A MRVP filed by TXSE under Rule 19d-1(c)(2) must be declared effective by the Commission.<sup>228</sup>

D. Rule 17d-2 Agreement. An agreement pursuant to Rule 17d-2<sup>229</sup> that allocates regulatory responsibility for those matters specified above<sup>230</sup> must be declared effective by the Commission, or TXSE must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

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<sup>228</sup> 17 CFR 240.19d-1(c)(2).

<sup>229</sup> 17 CFR 240.17d-2.

<sup>230</sup> See supra notes 139-141 and accompanying text.



E. Participation in Multi-Party Rule 17d-2 Plans. TXSE must become a party to the multi-party Rule 17d-2 agreement concerning the surveillance, investigation, and enforcement of common insider trading rules and the agreement concerning certain Regulation NMS and Consolidated Audit Trail rules.

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

IT IS FURTHER ORDERED, pursuant to Section 36 of the Act,<sup>231</sup> that TXSE shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the FINRA and NOM rules that TXSE proposes to incorporate by reference into TXSE's rules, subject to the conditions specified in this Order.

By the Commission.

**Sherry R. Haywood,**

*Assistant Secretary.*

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15 U.S.C. 78mm.