

for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁴⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁴⁶

A proposed rule change filed under Rule 19b-4(f)(6)⁴⁷ under the Act does not normally become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission previously approved the listing and trading of options on the iShares Ethereum Trust (the “Trust”).⁴⁹ The Exchange has provided information regarding the underlying Trust, including, among other things, information regarding trading volume, the number of beneficial holders, and the market capitalization of the Trust. The proposal also establishes position and exercise limits for options on the Trust and provides information regarding the surveillance procedures that will apply to Trust options. The Commission believes that waiver of the operative delay could benefit investors by providing an additional venue for trading Trust options. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.⁵⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2025-14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-PEARL-2025-14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2025-14 and should be submitted on or before May 8, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102853; File No. 10-244]

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

April 11, 2025.

I. Introduction and Procedural History

On May 9, 2024, Green Impact Exchange, LLC (“GIX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a Form 1 application (“Form 1”) under the Securities Exchange Act of 1934 (“Act”), seeking registration as a national securities exchange under Section 6 of the Act.¹ The Commission received comments on the Form 1.² On October 21, 2024, the Commission instituted proceedings pursuant to Section 19(a)(1)(B) of the Act³ to determine whether to grant or deny GIX’s application for registration as a national securities exchange under Section 6 of the Act.⁴ After issuance of the OIP, the Commission received a letter from GIX responding to comments.⁵ On January 16, 2025, the Commission extended, pursuant to Section 19(a)(1)(B) of the Act,⁶ the time period for granting or denying the Form 1 for an additional 90 days, until April 19, 2025.⁷ On February 4, 2025, GIX

⁵¹ 17 CFR 200.30-3(a)(12).

¹ 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/green-impact-exchange-llc-form-1-application-exhibits>. 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).

² The public comment file for the Form 1 (File No. 10-244) is available on the Commission’s website at: <https://www.sec.gov/comments/10-244/10-244.htm>.

³ 15 U.S.C. 78s(a)(1)(B).

⁴ See Securities Exchange Act Release No. 101397, 89 FR 85264 (Oct. 25, 2024) (“OIP”).

⁵ See letter from James G. Buckley, Chief Regulatory Officer, GIX, dated Nov. 25, 2024.

⁶ 15 U.S.C. 78s(a)(1)(B).

⁷ See Securities Exchange Act Release No. 102223, 90 FR 8228 (Jan. 27, 2025).

⁴⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the pre-filing requirement.

⁴⁷ 17 CFR 240.19b-4(f)(6).

⁴⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁹ See *supra* note 5.

⁵⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

filed an amendment to the Form 1 (“Amendment No. 1”).⁸ On February 28, 2025, GIX filed another amendment to the Form 1 (“Amendment No. 2”), which replaced and superseded Amendment No. 1 in its entirety.⁹ Amendment No. 2 was published for comment in the **Federal Register** on March 12, 2025.¹⁰ On March 6, 2025, GIX consented, pursuant to Section 19(a)(1)(B) of the Act,¹¹ to an extension of the time period for granting or denying the Form 1 for an additional 90 days, until July 18, 2025.¹² On March 17, 2025, GIX filed Amendment No. 3 to the Form 1 (“Amendment No. 3”).¹³ The Commission received no comments on the Form 1, as amended by Amendment Nos. 2 and 3.

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 GIX’s application, as

⁸ In Amendment No. 1, GIX amended Exhibits B (information about, among other things, rules of GIX not included in Exhibit A), B-1 (copy of the proposed GIX Rule Book), C (information regarding subsidiaries or affiliates), H (information about GIX’s listing applications), H-2 (Corporate Governance Certification), H-3 (Dual Listing Agreement), H-5 (Sustainability Governance Standards discussion), and J (list of officers, governors, members of all standing committees, or persons performing similar functions). Overall, the principal change in Amendment No. 1 was the replacement of the proposed Green Governance Standards with proposed Sustainability Governance Standards. Subsequently, on February 28, 2025, GIX filed Amendment No. 2, which replaced and superseded Amendment No. 1 in its entirety. See *infra* note 9.

⁹ In Amendment No. 2, GIX amended Exhibits B, B-1, C, H, H-1 (Dual Listing Application), H-2, H-3, and J of the original Form 1 primarily to eliminate the Green Governance Standards from GIX’s listing rules and delete any references to the Green Governance Standards from the application. GIX also withdrew Exhibit H-5 entirely. Amendment No. 2 is available on the Commission’s website at: <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/green-impact-exchange-llc-form-1-application-exhibits>. For purposes of this order, references to these listed Exhibits will be to the amended Exhibits filed with Amendment No. 2.

¹⁰ See Securities Exchange Act Release No. 102535 (Mar. 6, 2025), 90 FR 11865.

¹¹ 15 U.S.C. 78s(a)(1)(B).

¹² See letter from James G. Buckley, Chief Regulatory Officer, GIX, dated Mar. 6, 2025. See *supra* note 2.

¹³ In Amendment No. 3, GIX amended Exhibit C-3 (proposed First Amended and Restated Bylaws of Green Exchange, PBC (“GEPBC Bylaws”)) to clarify the language in Article VI, Section 6.11. Amendment No. 3 is available on the Commission’s website at: <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/green-impact-exchange-llc-form-1-application-exhibits>. The changes in Amendment No. 3 are technical amendments that do not require notice and comment.

amended, for registration as a national securities exchange.

II. Statutory Standards

Pursuant to Sections 6(b) and 19(a) of the Act,¹⁴ 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.¹⁵

As discussed in greater detail below, the Commission finds that GIX’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 GIX 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 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;¹⁶ (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;¹⁷ (3) not permit unfair discrimination between customers, issuers, or dealers;¹⁸ and (4) protect investors and the public interest.¹⁹ The Commission also finds that the proposed rules of GIX are consistent with Section 11A of the Act.²⁰ Finally, the Commission finds that GIX’s proposed rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²¹

¹⁴ 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

¹⁵ See also *supra* note 1 (discussing the time for Commission action following publication of notice of an application for exchange registration).

¹⁶ See U.S.C. 78f(b)(3).

¹⁷ See U.S.C. 78f(b)(5).

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ 15 U.S.C. 78k-1.

²¹ 15 U.S.C. 78f(b)(8).

III. Discussion

A. Ownership and Governance of GIX

GIX is a Delaware limited liability company²² that will be wholly owned by its sole member, Green Exchange, PBC (“GEPBC”), a Delaware public benefit corporation.²³ GEPBC will be the entity through which the individual investors who are ultimate owners of the Exchange will hold their ownership interests in the Exchange.²⁴

1. GIX Board of Directors

The Board²⁵ of GIX (“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 GIX as a self-regulatory organization (“SRO”).²⁶ Specifically:

- the Exchange Board initially will be composed of 10 Directors;²⁷
- one Director will be the Chief Executive Officer (“CEO”) of GIX, who shall be considered a Holdco Investor Director;²⁸
- at least 50% of the Directors of the Exchange Board shall be Non-Industry Directors,²⁹ and the remainder shall be Industry Directors;³⁰
- two Industry Directors (in addition to the CEO of GIX) shall be Holdco Investor Directors;³¹

²² See Certification of Formation of Green Impact Exchange, LLC.

²³ See Certificate of Incorporation of Green Exchange, PBC.

²⁴ See Form 1, Exhibit C and Exhibit K.

²⁵ “Board” means the Board of Directors of GIX. See Article I, Section 1.01 of the proposed First Amended and Restated Limited Liability Company Agreement of Green Impact Exchange (“GIX LLC Agreement”).

²⁶ See GIX LLC Agreement, Article VII, Section 7.02. See also Form 1, Exhibit J.

²⁷ See GIX LLC Agreement, Article VII, Section 7.03(a). The term “Director” is defined in GIX LLC Agreement, Article I, Section 1.01 and Article VII, Section 7.01. A Director may not be subject to statutory disqualification. See GIX LLC Agreement, Article VII, Section 7.06(d).

²⁸ See GIX LLC Agreement, Article VII, Section 7.03(b)(i). “Holdco Investor Director” means a Director who has been nominated by GEPBC pursuant to Section 3.01(c) of the GEPBC Bylaws to represent GEPBC’s interests on the Exchange Board. See GIX LLC Agreement, Article I, Section 1.01.

²⁹ “Non-Industry Director” means a Director who is an Independent Director or any other individual who would not be an Industry Director or Member Representative Director. See GIX LLC Agreement, Article I, Section 1.01.

³⁰ “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 GIX LLC Agreement, Article I, Section 1.01, for a description of all of the circumstances regarding when a Director would be considered an Industry Director.

³¹ See GIX LLC Agreement, Article VII, Section 7.03(b)(ii) and (c)(ii).

- two Directors shall be Member Representative Directors³² and counted as Industry Directors;³³ provided that if the size of the Board is increased or decreased, at least 20% of the Directors on the Exchange Board shall be Member Representative Directors;³⁴

- at least two of the Non-Industry Directors shall also qualify as Independent Directors;³⁵ and
- during such time as GIX operates a listings business, one of the Non-Industry Directors shall be an officer or director of an issuer (“Issuer Director”) and one of the Non-Industry Directors shall be a Public Investor Director,³⁶ provided that in each case, such

³² See GIX LLC Agreement, Article VII, Section 7.03(b). “Member Representative Director” means a Director who has been appointed as such to the initial Exchange Board pursuant to Section 7.04 of the GIX LLC Agreement or elected by GEPBC after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the GIX 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 Unit Holder. See GIX LLC Agreement, Article I, Section 1.01. A “Unit Holder” means a beneficial owner who owns, directly or indirectly, Units of GIX. An Exchange Member may be, but is not required to be, a Unit Holder. See GIX LLC Agreement, Article I, Section 1.01. “Units” means the limited liability company interests issued by GIX to Company Members. See GIX LLC Agreement, Article I, Section 1.01. “Company Member” means GEPBC and any other Unit Holders as may be added under the terms of the GIX LLC Agreement. See GIX LLC Agreement, Article I, Section 1.01. “Exchange Member” means any registered broker or dealer that has been admitted to membership in GIX. 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 GIX LLC Agreement, Article I, Section 1.01.

³³ See GIX LLC Agreement, Article VII, Section 7.03(b)(iii).

³⁴ See GIX LLC Agreement, Article VII, Section 7.03(b)(iii).

³⁵ See GIX LLC Agreement, Article VII, Section 7.03(b)(iv). “Independent Director” means a Director who has no material relationship with GIX or any affiliate of GIX 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 GIX or GEPBC. See GIX LLC Agreement, Article I, Section 1.01. In addition, the Exchange Board shall have a “Lead Independent Director,” who shall be an Independent Director selected by the Non-Industry Directors and will facilitate the functioning of the Exchange Board independently of management of GIX and provide independent leadership to the Exchange Board. See GIX LLC Agreement, Article VII, Section 7.03(d)(i) and (ii). See also GIX LLC Agreement, Article VII, Section 7.03(d)(ii)(A)–(K) for further description of the responsibilities of the Lead Independent Director.

³⁶ “Public Investor Director” means a Director who is a representative of public investors, provided that a Public Investor Director shall not be associated with an Exchange Member. An Independent Director may be a Public Investor Director. See GIX LLC Agreement, Article I, Section 1.01.

Director must not be associated with GEPBC. A Public Investor Director also must not be associated with an Exchange Member.³⁷

The initial Directors of the Exchange Board will be appointed by GEPBC and will serve until the first annual meeting of Company Members.³⁸ The first annual meeting of Company Members will be held within 90 days after the Commission grants GIX’s exchange registration.³⁹

In addition, GEPBC 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.⁴⁰ 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.⁴¹ Exchange Members will have rights to nominate and elect additional candidates for the Member Nominating Committee pursuant to a petition process.⁴²

The Nominating Committee will nominate candidates for election to the Board.⁴³ For Member Representative Director positions, the Member Nominating Committee, composed solely of Member Representative Committee or Panel Members,⁴⁴ will solicit input from Exchange Members, and Exchange Members may submit petition candidates.⁴⁵ 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

³⁷ See GIX LLC Agreement, Article VII, Section 7.03(b)(v).

³⁸ See GIX LLC Agreement, Article VII, Section 7.03(e).

³⁹ See GIX LLC Agreement, Article VII, Section 7.03(e).

⁴⁰ See GIX LLC Agreement, Article VIII, Section 8.07(b).

⁴¹ See GIX LLC Agreement, Article VIII, Section 8.07(b).

⁴² See GIX LLC Agreement, Article VII, Section 7.04.

⁴³ See GIX LLC Agreement, Article VII, Section 7.04(a).

⁴⁴ “Member Representative Committee or Panel 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 Unit Holder. See GIX LLC Agreement, Article I, Section 1.01.

⁴⁵ See GIX LLC Agreement, Article VII, Section 7.04(b). See also GIX LLC Agreement, Article VII, Section 8.07(c).

Committee.⁴⁶ If a petition process produces additional candidates, then the candidates nominated 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.⁴⁷ 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.⁴⁸

The GIX 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 GIX and therefore are consistent with Section 6(b)(3) of the Act.⁴⁹ 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.⁵⁰

In addition, with respect to the requirements that the number of Non-Industry Directors equal or exceed the number of Industry Directors (which include Member Representative

⁴⁶ See GIX LLC Agreement, Article VII, Section 7.04(b)(iii).

⁴⁷ See GIX LLC Agreement, Article VII, Section 7.04(b)(iii).

⁴⁸ See GIX LLC Agreement, Article VII, Section 7.04(b)(iv).

⁴⁹ 15 U.S.C. 78f(b)(3).

⁵⁰ See, e.g., Securities Exchange Act Release Nos. 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 MIA X Sapphire, LLC) (“Sapphire Order”); 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) (File No. 10–237) (order granting exchange registration of MEMX LLC (“MEMX Exchange”)) (“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 Exchange”)) (“LTSE Order”); 79543 (Dec. 13, 2016), 81 FR 92901, 92903 (Dec. 20, 2016) (File No. 10–227) (order granting exchange registration of MIA X PEARL, LLC) (“MIA X 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 (“MIA X Exchange”)) (“MIA X 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 Order”); 53128 (Jan. 13, 2006), 71 FR 3550, 3553 (Jan. 23, 2006) (File No. 10–131) (order granting exchange registration of Nasdaq Stock Market, Inc.) (“Nasdaq Order”).

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.⁵¹ 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.⁵² 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 GIX operates a listings business (*i.e.*, the requirement that one Director be an officer or director of an issuer and one Director be representative of public investors, in each case, not associated with a Company Member⁵³) is consistent with the requirements of Section 6(b)(3) of the Act.

2. Interim Board

GEPBC will hold a special meeting to appoint interim Directors of the Board ("Interim Board"), which will include interim Member Representative Directors.⁵⁴ Upon appointment of the interim Directors, the Interim Board will meet the Exchange Board composition requirements set forth in the GIX LLC Agreement.⁵⁵ The Interim Board Directors will serve only until the first annual meeting of Company Members, which will be held within 90 days after the Commission grants the Exchange's registration as a national securities exchange.⁵⁶ The Exchange represents that it will complete the full nomination, petition, and voting process set forth in the GIX 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 GIX LLC Agreement.⁵⁷

3. Exchange Committees

GIX has proposed to establish several named committees of the Exchange Board, including: an Appeals Committee,⁵⁸ a Regulatory Oversight Committee,⁵⁹ and a Governance and Sustainability Oversight Committee ("GSOC"),⁶⁰ as well as the Nominating Committee and Member Nominating Committee, discussed above.⁶¹

The Appeals Committee will consist of two Independent Directors, and one Member Representative Director.⁶² Each member of the Regulatory Oversight Committee must be an Independent Director.⁶³ The GSOC will consist of at least three members, including one Holdco Investor Director, one Member Representative Director, and one Non-Industry Director.⁶⁴

The GIX proposed named committees, which are similar to the named committees maintained by other exchanges (with one exception),⁶⁵ are

⁵⁷ See Form 1, Exhibit J.

⁵⁸ See GIX LLC Agreement, Article VIII, Section 8.01. The Appeals Committee will preside over all appeals related to disciplinary and adverse action determinations in accordance with GIX rules. See GIX LLC Agreement, Article VIII, Section 8.06.

⁵⁹ See GIX LLC Agreement, Article VIII, Section 8.01. 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 GIX LLC Agreement, Article VIII, Section 8.08(c).

⁶⁰ See GIX LLC Agreement, Article VIII, Section 8.01. The GSOC will recommend to the Exchange Board corporate governance principles applicable to GIX, including those related to environmental, social responsibility and sustainability matters; assist the Exchange Board in its annual evaluation of the performance and effectiveness of the Independent Lead Director, the Exchange Board and its committees; and perform such other duties as the Exchange Board and/or the Chairperson may direct. See GIX LLC Agreement, Article VIII, Section 8.09(b).

⁶¹ The Exchange Board could also establish additional committees. See GIX LLC Agreement, Article VIII, Section 8.01. All committees of the Exchange Board will be subject to the control and supervision of the Exchange Board. See *id.*

⁶² See GIX LLC Agreement, Article VIII, Section 8.06.

⁶³ See GIX LLC Agreement, Article VIII, Section 8.08(e).

⁶⁴ See GIX LLC Agreement, Article VII, Section 8.09(a).

⁶⁵ See, e.g., 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 Order")); Article IV, Section 4.1 of the Eleventh Amended and Restated

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.⁶⁶

B. GEPBC and Regulation of the Exchange

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

1. Ownership Structure; Ownership and Voting Limitations

As stated above, GIX will be owned by GEPBC. The proposed GEPBC Bylaws include restrictions on the ability to own and vote shares of Capital Stock⁶⁷ of GEPBC.⁶⁸ These limitations are designed to prevent any party to the GEPBC Bylaws 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 GEPBC shall control, directly or indirectly, GIX,

Bylaws of Cboe Exchange, Inc. The one exception is the GSOC, which acts in an advisory capacity on matters relating solely to the governance of GIX itself, not its Members or listed companies. See *infra* note 60.

⁶⁶ 15 U.S.C. 78f(b)(1).

⁶⁷ "Capital Stock" means any and all shares of stock of GEPBC, including, without limitation, shares of common, preferred, or other preference stock. See GEPBC Bylaws, Article I, Section 1.01.

⁶⁸ These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. See, e.g., LTSE Order, MIAx PEARL Order, MIAx Order, and BATS Order, *supra* note 50, and IEX Order, *supra* note 65; 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, 46624 (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 demutualization order); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR-NSX-2006-03) (NSX demutualization order); 51149 (Feb. 8, 2005), 70 FR 7531 (Feb. 14, 2005) (SR-CHX-2004-26) (CHX demutualization order); and 49098 (Jan. 16, 2004), 69 FR 3974 (Jan. 27, 2004) (SR-Phlx-2003-73) (Phlx demutualization order).

⁵¹ 15 U.S.C. 78f(b)(3).

⁵² See, e.g., 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.

⁵³ See GIX LLC Agreement, Article VII, Section 7.03(b)(v).

⁵⁴ See Form 1, Exhibit J.

⁵⁵ See *id.* See also GIX LLC Agreement, Article VII, Section 7.03.

⁵⁶ See GIX LLC Agreement, Article VII, Section 7.03(e).

no person,⁶⁹ either alone or together with its related persons,⁷⁰ will be permitted to own, directly or indirectly, of record or beneficially, Capital Stock constituting more than 40% of any class of Capital Stock.⁷¹ A more restrictive condition will apply to the broker-dealer members of the Exchange, who will be prohibited from owning, directly or indirectly, either alone or together with their related persons, more than 20% of any class of Capital Stock.⁷² If any stockholder⁷³ purports to sell, transfer, assign, pledge, or own any shares of GEPBC in violation of these ownership limits, GEPBC 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.⁷⁴

In addition, no person, alone or together with its related persons, may, directly, indirectly, or pursuant to any agreement, vote or cause the voting of Capital Stock or give any consent or proxy with respect to Capital Stock representing more than 20% of the voting power of the then-issued and outstanding Capital Stock (“Voting Limitation”).⁷⁵ Further, no person, either alone or together with its related persons, may enter 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 the Capital Stock that is subject to such agreement, plan, or other arrangement

⁶⁹ See GEPBC Bylaws, Article I, Section 1.01 (defining “Person”).

⁷⁰ See *id.* (defining “Related Persons”).

⁷¹ See GEPBC Bylaws, Article V, Section 5.05(a)(i). There are limited exceptions to these prohibitions. See *infra* notes 76–78 and accompanying text.

⁷² See GEPBC Bylaws, Article V, Section 5.05(a)(ii). This restriction, unlike others discussed below (see *infra* note 76–78 and accompanying text), cannot be waived. See GEPBC Bylaws, Article V, Section 5.05(c)(ii).

⁷³ See GEPBC Bylaws, Article I, Section 1.01 (defining “Stockholder”).

⁷⁴ See GEPBC Bylaws, Article V, Section 5.08(a). GEPBC shall, promptly upon the occurrence of any automatic conversion pursuant to GEPBC Bylaws, Article V, Section 5.08, authorize and issue such number of shares of nonvoting shares as is necessary to effect the conversion, and shall reflect the resulting changes in its books and records relating to Capital Stock. Notwithstanding anything to the contrary, the failure to reflect the conversion in the books and records of GEPBC shall not invalidate such automatic conversion, which shall be deemed to be effective notwithstanding any such failure. See GEPBC Bylaws, Article V, Section 5.08(d). In addition, in the event that any redemption has resulted in any stockholder owning such number of shares that is in violation of the ownership limits, GEPBC will be required to redeem those shares pursuant to the limitation provisions. See GEPBC Bylaws, Article V, Section 5.08(g).

⁷⁵ See GEPBC Bylaws, Article V, Section 5.05(a)(iii).

not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan, or other arrangement would be to enable any person, either alone or together with its related persons, to vote, possess the right to vote, or cause the voting of Capital Stock that would represent more than 20% of such voting power.⁷⁶

Except with respect to Exchange Members and their related persons, GEPBC will be permitted to waive the 40% ownership limitation and the 20% Voting Limitation pursuant to a unanimous resolution of the GEPBC Board,⁷⁷ if it makes certain determinations.⁷⁸ Any such waiver will not be effective unless and until approved by the Commission.⁷⁹

Any person that proposes to own Capital Stock in excess of the 40% ownership limitation, or to vote or grant any proxies or consents with respect to Capital Stock constituting more than 20% of the voting power of then-issued and outstanding Capital Stock, will be required to deliver written notice to the GEPBC Board of its intention.⁸⁰ The notice must be delivered to GEPBC not less than 45 days (or any shorter period to which the Board expressly consents) before the proposed ownership of such Capital Stock or the proposed vote.⁸¹

The GEPBC Bylaws also contain provisions that are designed to further safeguard the ownership and voting limitations described above, or are otherwise related to direct and indirect changes in control. Specifically, any person that, either alone or together

⁷⁶ See *id.*

⁷⁷ See GEPBC Bylaws, Article V, Section 5.05(c)(ii).

⁷⁸ See GEPBC Bylaws, Article V, Section 5.05(c)(ii). The required determinations are that such waiver will not impair the ability of the Exchange to carry out its functions and responsibilities as an “exchange” under the Act and the rules and regulations promulgated thereunder; that such waiver is otherwise in the best interests of GEPBC, its stockholders, and the Exchange; that such waiver will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder; and that such Person and its Related Persons are not subject to any applicable “statutory disqualification” within the meaning of Section 3(a)(39) of the Act. See GEPBC Bylaws, Article V, Section 5.05(c)(ii) and (d). These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. See, e.g., MEMX Order, LTSE Order, MIAx PEARL Order, MIAx Order, and BATS Order, *supra* note 50; ISE Mercury Order and ISE Gemini Order, *supra* note 67; IEX Order, *supra* note 65; 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”).

⁷⁹ See GEPBC Bylaws, Article V, Section 5.05(c)(ii).

⁸⁰ See GEPBC Bylaws, Article V, Section 5.05(e).

⁸¹ See *id.*

with its related persons owns, directly or indirectly (whether by acquisition or a change in the number of Capital Stock outstanding), of record or beneficially 5% or more of the then outstanding Capital Stock will be required to notify the GEPBC Board in writing of such ownership.⁸² Thereafter, such persons will be required to update GEPBC of any increase or decrease of 1% or more in their previously reported ownership percentage.⁸³

The Exchange’s LLC Agreement does not include the same change of control provisions that are present in the GEPBC Bylaws because the GIX LLC Agreement instead explicitly identifies its owner (GEPBC) by name as the Company Member of GIX.⁸⁴ Thus, any changes in the ownership of GIX would require the GIX LLC Agreement to be amended. Any amendment to the GIX LLC Agreement, including to ownership of the Exchange, would constitute a proposed rule change under Section 19(b) of the Act⁸⁵ and Rule 19b–4⁸⁶ thereunder that will be required to be filed with, or filed with and approved by, the Commission.⁸⁷ Moreover, pursuant to the GIX LLC Agreement itself, any transfer of limited liability company interests of GIX will be subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act.⁸⁸

Although GEPBC is not directly responsible for regulation, its activities with respect to the operation of GIX must be consistent with, and must not interfere with, the self-regulatory obligations of GIX.⁸⁹ As described above, the provisions applicable to direct and indirect changes in control of GEPBC and GIX, as well as the voting limitation imposed on owners of GEPBC who also are Exchange Members, are

⁸² See GEPBC Bylaws, Article V, Section 5.06(a). The notice will require the Person’s full legal name; the Person’s title or status and the date on which such title or status was acquired; the Person’s and its Related Person’s approximate ownership interest in GEPBC; and whether the person has power, directly or indirectly, to direct the management or policies of GEPBC, whether through ownership of securities, by contract or otherwise. See *id.*

⁸³ See GEPBC Bylaws, Article V, Section 5.06(b)(i). Changes of less than 1% must also be reported to GEPBC if they result in such Person crossing a 20% or 40% ownership threshold. See *id.* In addition, the Exchange’s rules also impose limits on affiliation between the Exchange and an Exchange Member. See GIX Rule 2.210 (No Affiliation between Exchange and any Member).

⁸⁴ See GIX LLC Agreement, Schedule 1.

⁸⁵ 15 U.S.C. 78s(b).

⁸⁶ 17 CFR 240.19b–4.

⁸⁷ See GIX LLC Agreement, Article XIX, Section 19.02.

⁸⁸ See GIX LLC Agreement, Article XV, Section 15.01(a).

⁸⁹ See, e.g., IEX Order, *supra* note 65.

designed to help prevent any owner of GEPBC from exercising undue influence or control over the operation of the Exchange and to help ensure that the Exchange 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 objectively exercise its self-regulatory responsibilities with respect to such member.⁹⁰ 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."⁹¹ To help ensure independent and empowered SRO regulatory operations, GIX has, among other things, adopted a governance structure designed to mitigate the inherent conflict. Specifically, GIX 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

⁹⁰ See, e.g., MEMX Order, LTSE Order, MIAAX PEARL Order, MIAAX Order, and BATS Order, *supra* note 50; IEX Order, *supra* note 65; ISE Mercury Order, *supra* note 67; and DirectEdge Exchanges Order, *supra* note 77.

⁹¹ 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").

addition, GIX has an Exchange Board composed of at least 50% Non-Industry Directors⁹² with required key board committees that are either fully independent or majority independent, such as the Regulatory Oversight Committee⁹³ and the Appeals Committee.⁹⁴

Ownership and voting limits in the governing documents of an exchange and/or its holding company further protects the status of SRO independence. The provisions that GIX has proposed, which are consistent with those in place across all exchanges today, 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. These provisions impose limits on voting and ownership of exchange holding companies, with more stringent ownership limits imposed on member owners.⁹⁵

As a registered exchange, GIX 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, GIX has proposed to adopt industry-standard protections in a governance structure for itself and its holding company that is designed to preserve GIX's self-regulatory independence by protecting GIX from inappropriate business pressures.

GIX's and GEPBC'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.⁹⁶ 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 GEPBC will not itself carry out regulatory functions, its activities with respect to the operation of GIX

⁹² In addition, at least two of the Non-Industry Directors shall be Independent Directors. See GIX LLC Agreement, Article VII, Section 7.03(b)(iv).

⁹³ Each member of the Regulatory Oversight Committee will be an Independent Director. See GIX LLC Agreement, Article VIII, Section 8.08(e).

⁹⁴ The Appeals Committee will consist of two Independent Directors and one Member Representative Director. See GIX LLC Agreement, Article VIII, Section 8.06.

⁹⁵ See *supra* notes 68–87 and accompanying text.

⁹⁶ 15 U.S.C. 78f(b)(1).

must be consistent with, and must not interfere with, GIX's self-regulatory obligations. In this regard, GIX and GEPBC propose to adopt certain provisions in their respective governing documents that are designed to help maintain the independence of the regulatory functions of GIX. These proposed provisions are substantially similar to those included in the governing documents of other exchanges that recently have been granted registration.⁹⁷ Specifically:

- the directors, officers, employees, and agents of GEPBC must give due regard to the preservation of the independence of the self-regulatory function of GIX 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 interfere with GIX's ability to carry out its responsibilities under the Act.⁹⁸
- GEPBC must comply with the federal securities laws and the rules and regulations promulgated thereunder, and must cooperate with the Commission, GIX, Financial Industry Regulatory Authority, Inc. ("FINRA"), and any other SROs pursuant to and to the extent of their respective regulatory authority.⁹⁹ In addition, GEPBC's officers, directors, employees, and agents must comply with the federal securities laws and the rules and regulations promulgated thereunder and

⁹⁷ See, e.g., 24X Order, MEMX Order, and LTSE Order, *supra* note 50; IEX Order, *supra* note 65; and DirectEdge Exchanges Order, *supra* note 77.

⁹⁸ See First Amended & Restated Bylaws of Green Exchange PBC ("GEPBC Bylaws"), Article VI, Section 6.10. Similarly, Article VII, Section 7.02(b) of the GIX LLC Agreement requires the Exchange Board and each Director, when managing the business and affairs of GIX, to consider the requirements of Section 6(b) of the Act and requires each Director, officer, or employee of GIX to comply with the federal securities laws and regulations thereunder and cooperate with the Commission, and GIX pursuant to its regulatory authority. Article VII, Section 7.02(c) of the GIX 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 GIX and the other operations of GIX, 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.

⁹⁹ See GEPBC Bylaws, Article VI, Section 6.08.

are deemed to agree to cooperate with: (1) the Commission and GIX in respect of the Commission's oversight responsibilities regarding GIX and the self-regulatory functions and responsibilities of GIX; and (2) FINRA and any other SROs with respect to such other SRO's oversight responsibilities.¹⁰⁰ GEPBC must take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate.¹⁰¹

- GEPBC, and its officers, directors, employees, and agents must submit to the jurisdiction of the U.S. federal courts, the Commission, and GIX, 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, GIX activities.¹⁰²

- All books and records of GIX reflecting confidential information pertaining to the self-regulatory function of GIX (including but not limited to disciplinary matters, trading data, trading practices, and audit information) must be retained in confidence by GIX and its personnel, including directors, officers, employees, and agents, and will not be used by GIX for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any GIX member) other than to personnel of the Commission, personnel of another SRO performing regulatory services on behalf of GIX, a processor operating pursuant to an effective national market system plan, and those personnel of GIX, members of committees of the Exchange Board, members of the Exchange Board, or hearing officers and other agents of GIX, to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of GIX.¹⁰³ Similar provisions apply to GEPBC and its directors, officers, employees, and agents.¹⁰⁴

- The books and records of GIX and GEPBC must be maintained in the United States¹⁰⁵ and, to the extent they are related to the operation or administration of GIX, GEPBC's books and records will be subject at all times to inspection and copying by the Commission and GIX.¹⁰⁶

- Furthermore, to the extent they are related to the operation or administration of GIX, the books, records, premises, officers, directors, employees, and agents of GEPBC will be deemed to be the books, records, premises, officers, directors, employees, and agents of GIX, for purposes of, and subject to oversight pursuant to, the Act.¹⁰⁷

- GEPBC 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 GEPBC to consent in writing to the applicability of provisions regarding non-interference, confidentiality, books and records, compliance and cooperation, jurisdiction, and regulatory obligations, with respect to their activities related to GIX.¹⁰⁸

- The GEPBC Bylaws require that, so long as GEPBC controls GIX, 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.¹⁰⁹

The provisions discussed in this section, which are designed to help ensure the independence of GIX's regulatory function and facilitate the ability of GIX 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.¹¹⁰

Further, Section 19(h)(1) of the Act¹¹¹ provides the Commission with the

GIX LLC Agreement, Article XIII, Section 13.01(b) and GEPB Bylaws, Article VI, Section 6.01(c).

¹⁰⁵ See GIX LLC Agreement, Article XIII, Section 13.01(a); and GEPBC Bylaws, Article VI, Section 6.11(a).

¹⁰⁶ See GEPBC Bylaws, Article VI, Section 6.11(b).

¹⁰⁷ See *id.*

¹⁰⁸ See GEPBC Bylaws, Article VI, Section 6.12.

¹⁰⁹ See GEPBC Bylaws, Article VI, Section 6.13(b).

¹¹⁰ 15 U.S.C. 78f(b)(1).

¹¹¹ See 15 U.S.C. 78s(h)(1).

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 . . .” 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),¹¹² 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,¹¹³ any person with a controlling interest in GIX would be jointly and severally liable with and to the same extent that GIX 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 Act¹¹⁴ 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 Act¹¹⁵ 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 GEPBC.

3. Regulatory Oversight Committee

The regulatory operations of GIX will be monitored by the Regulatory Oversight Committee of the Exchange Board. As mentioned above, the Regulatory Oversight Committee will consist only of Independent Directors.¹¹⁶ The Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of GIX's regulatory and SRO responsibilities, assessing GIX's

¹¹² 15 U.S.C. 78f(b)(1); 15 U.S.C. 78s(g)(1).

¹¹³ 15 U.S.C. 78t(a).

¹¹⁴ 15 U.S.C. 78t(e).

¹¹⁵ 15 U.S.C. 78u-3.

¹¹⁶ See GIX LLC Agreement, Article VIII, Section 8.08(e).

¹⁰⁰ See *id.*

¹⁰¹ See *id.*

¹⁰² See GEPBC Bylaws, Article VI, Section 6.07(b).

¹⁰³ See GIX LLC Agreement, Article XIII, Section 13.01(b).

¹⁰⁴ The GEPBC Bylaws further provide that all books and records of GIX reflecting confidential information pertaining to the self-regulatory function of GIX that come into the possession of GEPBC, and the information contained in those books and records of GIX, will be retained in confidence by GEPBC and the officers, directors, employees and agents of GEPBC. See GEPBC Bylaws, Article VI, Section 6.11(c). The GIX and GEPBC 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 GIX or GEPBC to disclose such information to the Commission or GIX. See

regulatory performance, and assisting the Exchange Board (and committees of the Exchange Board) in reviewing GIX's regulatory plan and the overall effectiveness of GIX's regulatory functions.¹¹⁷

Further, the Chief Regulatory Officer ("CRO") of GIX will have general supervision over GIX's regulatory operations, including responsibility for overseeing GIX's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another SRO to which GIX is a party.¹¹⁸ The Regulatory Oversight Committee, in consultation with the CEO of GIX, 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.¹¹⁹

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.¹²⁰ 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.¹²¹ The discussion below summarizes how GIX proposes to conduct and structure its regulatory operations.

a. Regulatory Funding

To help ensure that GIX has and will continue to have adequate funding to be able to meet its responsibilities under the Act, GIX states that, if the Commission approves GIX's application for registration as a national securities exchange, GEPBC will allocate sufficient assets to GIX to enable the Exchange's operation.¹²² Specifically, GIX represents that GEPBC will make a cash

contribution to GIX of \$5,000,000, "in addition to any previously-provided in-kind contributions, such as legal, regulatory, and operational assistance."¹²³ GIX also represents that such cash and in-kind contributions from GEPBC will be adequate to operate GIX, including the regulation of the Exchange,¹²⁴ and that pursuant to the GIX LLC Agreement, GEPBC will be obligated to provide such additional capital for GIX as GIX determines is necessary to meet its ongoing operating expenses related to its self-regulatory obligations.¹²⁵

Further, any "Regulatory Funds" received by GIX will not be used for non-regulatory purposes or distributed, advanced or allocated to GEPBC, but rather will be applied to fund the regulatory operations of GIX (including surveillance and enforcement activities), or, as applicable, used to pay restitution and disgorgement to customers.¹²⁶ Any excess non-regulatory funds, as solely determined by GIX, will be remitted to GEPBC in accordance with the GIX LLC Agreement.¹²⁷

b. Regulatory Contract With FINRA

Although GIX 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 GIX's behalf.¹²⁸ Specifically, GIX expects that such services will include performance of investigation, disciplinary, and hearing services.¹²⁹

Notwithstanding the RSA, GIX will retain legal responsibility for the regulation of its members and its market and the performance of FINRA as its regulatory services provider. Because GIX 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 GIX on a final RSA that specifies the services that will be provided to GIX.

It is consistent with the Act for GIX to contract with FINRA to perform certain examination, enforcement, and disciplinary functions.¹³⁰ 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 GIX.¹³¹ However, GIX, 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 GIX's behalf.¹³² In performing these regulatory functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of GIX to perform its regulatory functions.¹³³ Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for GIX, 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 GIX.¹³⁴

c. Rule 17d-2 Agreements

Section 19(g)(1) of the Act,¹³⁵ among other things, requires every SRO registered as either a national securities

¹¹⁷ See GIX LLC Agreement, Article VIII, Section 8.08(a).

¹¹⁸ See GIX LLC Agreement, Article IX, Section 9.03.

¹¹⁹ See GIX LLC Agreement, Article VIII, Section 8.08(c). To the extent that the CEO of GIX 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 GIX LLC Agreement, Article VIII, Section 8.08(d).

¹²⁰ See 15 U.S.C. 78f(b)(1).

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

¹²² See Form 1, Exhibit I.

¹²³ See Form 1, Exhibit I.

¹²⁴ See Form 1, Exhibit I.

¹²⁵ See GIX LLC Agreement, Article V, Section 5.02(a). GIX will be required to provide 30 days advanced notice of capital calls, and GEPBC will be obligated to pay capital calls promptly upon appropriate notice. The Exchange will receive all fees, including regulatory fees and trading fees, as well as any funds received from applicable market data fees and tape revenue. See *id.*

¹²⁶ See GIX LLC Agreement, Article XVII, Section 17.04(b). Article I, Section 1.01 of the GIX LLC Agreement defines "Regulatory Funds" as "fees, fines, or penalties derived from the regulatory operations of [GIX]," 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 [GIX], even if a portion of such revenues are used to pay costs associated with the regulatory operations of [GIX]." This definition is consistent with the rules of other SROs. See, e.g., MEMX LLC Agreement, Article XVII, Section 17.4(b); LTSE Bylaws, Article I(bb); Amended and Restated By-Laws of MIA Exchange, Article 1(ii); By-Laws of NASDAQ PHLX LLC, Article I(ii); and By-Laws of NASDAQ BX, Inc., Article I(ii).

¹²⁷ See Form 1, Exhibit I.

¹²⁸ See Form 1, Exhibit L. See also GIX Rule 9.100.

¹²⁹ See Form 1, Exhibit L.

¹³⁰ For example, 24X, MEMX, LTSE, IEX, MIA Exchange, MIA PEARL, LLC, Nasdaq MRX, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc. ("Cboe EDGX"), and Cboe BZX Exchange, Inc. have entered into RSAs with FINRA.

¹³¹ See, e.g., MEMX Order, LTSE Order, and Nasdaq Order, *supra* note 49; IEX Order, *supra* note 65; and DirectEdge Exchanges Order, *supra* note 77. The Commission is not approving the RSA or any of its specific terms.

¹³² See 15 U.S.C. 78s(g)(1).

¹³³ For example, if failings by FINRA have the effect of leaving GIX in violation of any aspect of GIX's self-regulatory obligations, GIX would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. See, e.g., MEMX Order, LTSE Order, Nasdaq Order and BATS Order, *supra* note 50; IEX Order, *supra* note 65; and DirectEdge Exchanges Order, *supra* note 77.

¹³⁴ See, e.g., MEMX Order, LTSE Order, and Nasdaq Order, *supra* note 49; and IEX Order, *supra* note 65.

¹³⁵ 15 U.S.C. 78s(g)(1).

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.¹³⁶ 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.¹³⁷ 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.¹³⁸

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.¹³⁹ GIX has represented to the Commission that it will join all applicable plans, including Rule 17d-2 plans for the allocation of regulatory responsibilities.¹⁴⁰ Similar to other exchanges, the Commission understands from GIX that it will enter into a bilateral Rule 17d-2 agreement covering common members of GIX 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 GIX as an exchange on GIX 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.¹⁴¹

Because GIX 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 under these agreements with respect to common members.¹⁴² Accordingly, the Commission is conditioning the operation of GIX 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 GIX as a party.

C. GIX Trading System

GIX will operate a fully automated electronic order book and will not maintain or operate a physical trading floor. Only Members¹⁴³ of GIX and

entities that enter into market access arrangements with members (collectively, "Users"¹⁴⁴) will have access to the GIX system.¹⁴⁵ Users will be able to electronically submit orders to buy or sell securities traded on the Exchange through a variety of systems.¹⁴⁶ GIX will allow firms to register as market makers with affirmative and negative market making obligations.¹⁴⁷

Users may submit orders to the Exchange as Limit Orders, Market Orders, or Pegged Orders.¹⁴⁸ Orders must be submitted with one of the following time-in-force instructions, as applicable: Immediate-or-Cancel; Day; Fill-or-Kill; Good 'til Time, and Regular Hours Only.¹⁴⁹ Users may submit orders with the display instructions of Displayed or Non-Displayed.¹⁵⁰ A Limit Order with a Displayed instruction also may include a Reserve Quantity.¹⁵¹ Displayed orders will be displayed on an anonymous basis at a specified price.¹⁵² Orders may be entered as a Round Lot, Odd Lot, or Mixed Lot.¹⁵³ In addition, a User may attach a Minimum Execution Quantity instruction to a Limit Order.¹⁵⁴ Users also may choose to designate orders as GIX Only or Post Only.¹⁵⁵ GIX'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.¹⁵⁶

GIX will offer a Random Replenishment instruction in connection with a Limit Order submitted with a Reserve Quantity instruction.¹⁵⁷ In addition to

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

¹³⁷ 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.

¹³⁸ 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. 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 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) and 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).

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

¹⁴⁰ See Form 1, Exhibit E.

¹⁴¹ See Securities Exchange Act Release Nos. 100636 (Aug. 1, 2024), 89 FR 64517 (Aug. 7, 2024) (File No. 4-618) (multi-party plan concerning covered Regulation NMS and Consolidated Audit Trail rules); and 89972 (Sept. 23, 2020), 85 FR 61062 (Sept. 29, 2020) (File No. 4-566) (multi-party plan for insider trading rules).

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

¹⁴³ "Member" means any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a Member of the Exchange as that term is defined in Section 3(a)(3) of the Act. See GIX Rule 1.160(aa).

¹⁴⁴ See GIX Rule 1.160(bb).

¹⁴⁵ To obtain authorized access to the GIX system, each User must enter into a User Agreement with GIX. See GIX Rule 1.130(a).

¹⁴⁶ For a discussion of the means of access to GIX, see Form 1, Exhibit E-1.

¹⁴⁷ See GIX Rules 11.150 through 11.152. GIX'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 Choe EDGX Rules 11.17 through 11.20.

¹⁴⁸ See GIX Rule 11.190. Limit Orders may be designated as Intermarket Sweep Orders. See GIX Rule 11.190(c)(6). Pegged Orders may be designated as either a Primary Peg or a Midpoint Peg. See GIX Rule 11.190(c)(7)(i) and (ii).

¹⁴⁹ See GIX Rule 11.190(d).

¹⁵⁰ See GIX Rule 11.190(c)(1). Market Orders and Pegged Orders are not eligible for display. See GIX Rules 11.190(b)(2)(C) and 11.190(c)(7)(E).

¹⁵¹ See GIX Rule 11.190(b)(1)(F).

¹⁵² See GIX Rule 11.230(c).

¹⁵³ See Form 1, Exhibit E-2, and GIX Rule 11.180(a)-(c).

¹⁵⁴ See GIX Rule 11.190(b)(1)(b).

¹⁵⁵ See GIX Rules 11.190(c)(3) and (4) and (c)(7)(G).

¹⁵⁶ See, e.g., MEMX Rules 11.6 and 11.8 and Choe EDGX Rules 11.6 and 11.8.

¹⁵⁷ See Form 1, Exhibit E-2, and GIX Rule 11.190(c)(2)(ii).

randomizing the size of the refreshed displayed portion, this instruction will allow the User to elect to have the GIX system randomly replenish the displayed replenishment quantity at different time intervals ranging up to one millisecond following each execution that triggers replenishment.¹⁵⁸

The GIX system will continuously and automatically match orders pursuant to price/time priority. For equally-priced trading interest in time priority, generally GIX will give first priority to the portion of a Limit Order with a displayed instruction over Limit Orders with a non-displayed instruction, Primary Pegged Orders, Midpoint Pegged Orders, and Reserve Quantity of Limit Orders.¹⁵⁹ With respect to the price of executions that would occur on GIX, the GIX system is designed to comply with the order protection requirements of Rule 611 of Regulation NMS¹⁶⁰ by requiring that, for any execution to occur on GIX during regular trading hours, the price must be equal to, or better than, the Protected NBBO unless an exception to Rule 611 applies.¹⁶¹ Orders may be executed on the Exchange during the Regular Market Session or during Pre- and Post-Market Sessions;¹⁶² however, some order types and functionality are available only during the Regular Market Session.¹⁶³

In addition, GIX's rules are designed to address locked and crossed markets, as required by Rule 610(d) of Regulation NMS,¹⁶⁴ 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.¹⁶⁵

¹⁵⁸ See GIX Rule 11.190(c)(2)(ii).

¹⁵⁹ See GIX Rule 11.220. See also Form 1, Exhibit E-2. The highest-priced order to buy (lowest-priced order to sell) will have priority over all other orders to buy (sell) in all cases.

¹⁶⁰ 17 CFR 242.611.

¹⁶¹ See GIX Rules 1.160(al) (defining "Protected NBBO") and 11.230(a)(2).

¹⁶² GIX's Regular Market Session will run from 9:30 am ET to 4:00 pm ET, its Pre-Market Session will run from 7:00 am ET to 9:30 am ET, and its Post-Market Session will run from 4:00 pm ET to 5:00 pm ET. See GIX Rules 1.160(aq), (ai) and (aj).

¹⁶³ See GIX Rules 11.190(a)-(c).

¹⁶⁴ 17 CFR 242.610(d).

¹⁶⁵ See GIX Rule 11.230(f). See also GIX Rule 11.190(g) (providing that price sliding orders that at the time of entry would create a violation of Rule 610(d) of Regulation NMS, 17 CFR 242.610(d) by locking or crossing a Protected Quotation will be ranked and displayed at one minimum price variant ("MPV") below the current national best offer (for bids) or one MPV above the current national best bid (for offers)).

In addition, GIX will offer outbound routing functionality through non-affiliated routing broker-dealers.¹⁶⁶ A Member's use of the order routing functionality provided by the Exchange through a non-affiliated routing broker-dealer is entirely optional and Members may use other broker-dealers to route out to other trading centers.¹⁶⁷

The Commission finds that GIX'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.¹⁶⁸

GIX's proposed outbound routing rule is comparable to rules the Commission has approved for other exchanges that utilize non-affiliated routing brokers.¹⁶⁹ The outbound routing functionality of GIX is 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 mechanism of a free and open market and a national market system, protect investors and the public interest, and not permit unfair discrimination between customer, issuers, brokers or dealers.¹⁷⁰

As a national securities exchange, GIX will be a trading center whose quotations can be "automated quotations" under Rule 600(b)(6).¹⁷¹ GIX 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 611.¹⁷²

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

¹⁶⁶ See GIX Rule 2.220.

¹⁶⁷ See GIX Rule 2.220(a)(3).

¹⁶⁸ See 15 U.S.C. 78f(b)(5). GIX's trading rules, including its rules relating to market makers, order types and instructions, priority, 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 EDGX rulebook.

¹⁶⁹ See, e.g., MIAX Options Exchange Rule 529 and MIAX Pearl Options Exchange Rule 529.

¹⁷⁰ See 15 U.S.C. 78f(b)(5).

¹⁷¹ See GIX Rule 11.230(c).

¹⁷² See 17 CFR 242.600(b)(81)-(82) and 17 CFR 242.611.

specifications.¹⁷³ It would be a reasonable policy and procedure under Rule 611(a) to require that industry participants begin treating GIX'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 GIX begins operation as a national securities exchange. The Commission has taken the same position with other new equities exchanges.¹⁷⁴

D. Technology Agreement With MEMX Technology

1. Delivery, Licenses and Services Agreement ("DLSA")

The Exchange will utilize trading technology and systems (collectively, the "System")¹⁷⁵ developed by MEMX Technologies, LLC ("MEMX Technologies"),¹⁷⁶ a subsidiary of MEMX Holdings LLC, and provided to the Exchange pursuant to a DLSA between MEMX Technologies and the Exchange.¹⁷⁷ Specifically, pursuant to the DLSA, MEMX Technologies will "supply all necessary hardware and connectivity to operate the System, install market-relevant software on the hardware platform, maintain the hardware and software, including updates to necessary software and systems."¹⁷⁸ MEMX Technologies will support intra-day compliance monitoring by GIX and provide timely reporting to GIX of any potential Regulation SCI events or other operational issues with the System.¹⁷⁹

Although MEMX Technologies would provide the technology support services, GIX will be responsible for the daily operations of its market.¹⁸⁰ To ensure logical and physical separation from MEMX Technologies and its affiliates,

¹⁷³ 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).

¹⁷⁴ See, e.g., MEMX Order, *supra* note 50, at 27461; BATS Order, *supra* note 50, at 49505; and DirectEdge Exchanges Order, *supra* note 77, at 13163.

¹⁷⁵ See Form 1, Exhibit E (defining "System" for purposes of the DLSA).

¹⁷⁶ GIX does not own the System but states that it has obtained all necessary licenses and authorizations from MEMX Technologies in order for GIX and its Members and Users to fully utilize the System. See Form 1, Exhibit E.

¹⁷⁷ See Form 1, Exhibit E. Among other things, the DLSA sets forth a multi-year term with automatic renewal provisions that requires MEMX Technologies to deliver the System and run industry connectivity testing and other functional-based testing. See *id.* The DLSA also provides for transition services to the extent either party decides to terminate the arrangement. See *id.*

¹⁷⁸ See Form 1, Exhibit C.

¹⁷⁹ See *id.*

¹⁸⁰ See Form 1, Exhibit E.

the System will operate a separate instance of MEMX Technologies' core matching engine technology and software, utilizing separate servers from the MEMX Exchange system and separate connections for GIX Members to connect to GIX.¹⁸¹ Under the terms of the DLSA, GIX may request MEMX Technologies to develop and implement (for a fee to be determined by the parties) technology changes that change the operation of the GIX System. GIX is not obligated to agree to, accept, or adopt changes to the System that are not essential to the operation of its instance of the System.¹⁸² Additionally, GIX stated that the "trading platforms operated by MEMX Technologies (including GIX LLC, MEMX Exchange, and any other exchanges or trading platforms operated by MEMX Technologies) currently are and will be segregated to ensure that GIX is not deemed to be a facility of MEMX Exchange."¹⁸³ MEMX Technologies will not use or disclose information or data (i) about or originating with GIX in its dealings with MEMX Exchange or any other platform or (ii) about or originating with MEMX Exchange or any other platform in its dealing with GIX.¹⁸⁴

GIX, not MEMX Technologies, has regulatory responsibility over the GIX System, and therefore GIX as an SRO is fully responsible for discharging its obligations as a registered national securities exchange. Further, GIX will interact with the MEMX Exchange, including MEMX Exchange's routing broker-dealer, on the same arms-length commercial terms as GIX interacts with other registered national securities exchanges and their routing broker-dealers.¹⁸⁵ Membership in the MEMX Exchange will not confer any advantages when trading on GIX (or vice versa), such as faster connections, lower fees, or preferential treatment of orders on the GIX System.¹⁸⁶ Membership in the MEMX Exchange will also not be a requirement for membership in or connection to GIX (or vice versa).¹⁸⁷

After considering the disclosures GIX made in the Form 1 as amended, the Commission finds that GIX's proposal to utilize technology provided and maintained by MEMX Technologies is consistent with the Act, in particular with Section 6(b)(1) of the Act,¹⁸⁸ which

requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members with the Act and the rules thereunder. The arrangement between GIX and MEMX Technologies, as described in the amended Form 1, will enable the Exchange to utilize trading platform technology that is already in use with an experienced operator.¹⁸⁹ However, the terms of the DLSA between GIX and MEMX Technologies, as described in the amended Form 1, are reasonably designed not to confer upon either MEMX Exchange or GIX Members any advantages when trading on GIX, or vice versa, such as faster connections, lower fees, or preferential treatment of orders on the GIX System.¹⁹⁰ GIX will retain responsibility for overseeing the daily market operations of its trading system; MEMX Technologies will be responsible for performing all necessary maintenance and remediation of problems relating to the logical and physical infrastructure, in accordance with the DLSA.¹⁹¹ Therefore, GIX will be capable of exercising sufficient control over the operation of its System, and will be sufficiently independent from MEMX Technologies, to enable GIX to comply with the requirements under the Act and the rules thereunder.

The provisions of the DLSA described above demonstrate that the support services provided by MEMX Technology are adequate to enable GIX to meet its self-regulatory obligations. In order for GIX to perform its regulatory obligations, the DLSA provides GIX with enumerated audit rights to review books and records of MEMX Technologies related to the provision of services under the DLSA, and the ability either to produce itself, or direct MEMX Technologies to produce, MEMX Technologies documents and information related to the operation of the System to the Commission or other regulators or parties upon request, subject to appropriate due process.¹⁹²

Finally, GIX will have regulatory responsibility for its trading System and will be responsible to fully discharge its obligations as a national securities exchange. GIX will also be responsible

for its market and cross-market surveillance through the RSA, described above,¹⁹³ and maintain its independent regulatory function to oversee the RSA and will not rely on or utilize MEMX Exchange or its personnel to fulfill any aspect of those obligations on GIX's behalf.

2. Regulation SCI

As a registered national securities exchange, GIX will be an "SCI entity" responsible for compliance with the requirements of Regulation Systems Compliance and Integrity ("Regulation SCI").¹⁹⁴ Regulation SCI requires SCI entities to establish written policies and procedures reasonably designed to ensure that their applicable systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Act.¹⁹⁵ In addition, Regulation SCI requires SCI entities to take corrective action with respect to SCI events (defined to include systems disruptions, systems compliance issues, and systems intrusions), notify the Commission of such events, and disseminate information about certain SCI events to affected members or participants (and, for certain major SCI events, to all members or participants of the SCI entity).¹⁹⁶ Moreover, Regulation SCI requires SCI entities to conduct a review of their systems by objective personnel at least annually, submit quarterly reports regarding completed, ongoing, and planned material changes to their SCI systems to the Commission,¹⁹⁷ and maintain certain books and records.¹⁹⁸ It also requires SCI entities to mandate participation by designated members or participants in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities.¹⁹⁹

Regulation SCI applies to an SCI entity's "SCI systems," which are systems that directly support any one of six key securities market functions—

¹⁹³ See *supra* section III.B.4.b. (discussing GIX's RSA with FINRA).

¹⁹⁴ See Securities Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72252 (Dec. 5, 2014) ("Regulation SCI 2014 Adopting Release").

¹⁹⁵ See 17 CFR 242.1001.

¹⁹⁶ See 17 CFR 242.1002. See also 17 CFR 242.1000 and 17 CFR 242.1006.

¹⁹⁷ See 17 CFR 242.1003. See also 17 CFR 242.1000.

¹⁹⁸ See 17 CFR 242.1005. See also 17 CFR 242.1007.

¹⁹⁹ See 17 CFR 242.1004.

¹⁸⁹ See, e.g., Securities Exchange Act Release No. 100783 (Aug. 20, 2024), 89 FR 68481 (Aug. 26, 2024) (SR-LTSE-2024-03) (approval of proposed rule change by Long-Term Stock Exchange to transition from its current trading platform to a new trading platform that uses technology provided by MEMX Technologies); and 24X Order, *supra* note 50.

¹⁹⁰ See Form 1, Exhibit E.

¹⁹¹ See Form 1, Exhibit E.

¹⁹² See *id.*

¹⁸¹ See *id.*

¹⁸² See *id.*

¹⁸³ See Form 1, Exhibit C.

¹⁸⁴ See *id.*

¹⁸⁵ See Form 1, Exhibit E.

¹⁸⁶ See *id.*

¹⁸⁷ See *id.*

¹⁸⁸ 15 U.S.C. 78f(b)(1).

trading, clearance and settlement, order routing, market data, market regulation, and market surveillance (“SCI systems”). Regulation SCI also applies to “indirect SCI systems,” which are any systems that, if breached, are likely to pose a security threat to SCI systems. Further, certain SCI systems that are “critical SCI systems” are held to certain heightened requirements under Regulation SCI.²⁰⁰

The Exchange has obtained commitments from MEMX Technologies in connection with the Exchange’s engagement of MEMX Technologies to develop, license, and operate the System on behalf of the Exchange to, among other things, address how this arrangement is consistent with the requirements of Regulation SCI.²⁰¹ The Exchange acknowledges that as the SCI entity contracting with MEMX Technologies to provide software and hardware to operate both SCI systems and indirect SCI systems, GIX will have full responsibility for ensuring that it is in compliance with all aspects of Regulation SCI, including the requirements for its backup and recovery capabilities.²⁰² In addition, the DLSA includes commitments from MEMX Technologies as developer, licensor, and operator of the System to cooperate with the Exchange and provide the Exchange with the information and access that the Exchange reasonably believes will allow the Exchange to satisfy its obligations under Regulation SCI.²⁰³

E. 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.²⁰⁴ 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.²⁰⁵ As also stated above, pursuant to an RSA with FINRA, FINRA will perform many of the initial disciplinary processes on behalf of GIX.²⁰⁶ For example, FINRA will

investigate potential securities laws violations, issue complaints, and conduct hearings pursuant to GIX rules. Appeals from disciplinary decisions will be heard by the GIX Appeals Committee,²⁰⁷ and the GIX Appeals Committee’s decision shall be final unless the Exchange Board on its own initiative orders review of a disciplinary decision.²⁰⁸

GIX’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.²⁰⁹ The Exchange’s rules also permit GIX 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.²¹⁰ GIX’s rules also provide for the imposition of fines for certain minor rule violations in lieu of commencing disciplinary proceedings.²¹¹ Accordingly, as a condition to the operation of GIX, a Minor Rule Violation Plan (“MRVP”) filed by GIX under Act Rule 19d–1(c)(2) must be declared effective by the Commission.²¹²

The Commission finds that GIX’s rules concerning its disciplinary and oversight programs are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) of the Act²¹³ in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of GIX 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 GIX.²¹⁴

F. Listing and Trading Securities on GIX

1. Dual Listing on GIX

GIX will not be a primary listing market for securities. However, under GIX’s rules, an issuer whose securities are, or at the time of listing on GIX will be, listed on another national securities exchange registered with the

Commission pursuant to Section 6(a) of the Act (its “primary listing exchange”) may apply to also list those securities on the Exchange.²¹⁵ An issuer whose securities are listed on GIX and another national securities exchange must at all times continue to be in good standing with its primary listing exchange.²¹⁶ Such issuers are required to notify: (1) GIX promptly if it receives oral or written notification from its primary listing exchange that such class of listed securities has fallen below the continued listing requirements of such market, and conversely (2) the primary listing exchange if it receives oral or written notification that such class of listed securities has fallen below GIX’s continued listing requirements.²¹⁷

GIX’s original Form 1 would have required issuers that dually list their securities on GIX and another national securities exchange to satisfy proposed Green Governance Standards in addition to the initial and continued listing standards described below.²¹⁸ Commenters on the Form 1 commented only on the Green Governance Standards, weighing both in support and in opposition to them.²¹⁹ In Amendment No. 1, GIX replaced its proposed Green Governance Standards with Sustainability Governance Standards.²²⁰ Subsequently, in Amendment No. 2, GIX removed those Sustainability Governance Standards from the Form 1.²²¹

The Commission finds that GIX’s dual listing provisions as amended are consistent with the Act. They are substantively identical to those of LTSE, which the Commission previously approved.²²²

2. Initial and Continued Listing Standards

The Commission finds that GIX’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

²¹⁵ See GIX Rule 14.105(a) and GIX Rule 14.301(c).

²¹⁶ See GIX Rule 14.105(b).

²¹⁷ See GIX Rule 14.105(c).

²¹⁸ GIX stated that the proposed Green Governance Standards were designed to provide investors with access to accountable and enforceable information about the quality of a listed company’s commitment to sustainable ways of doing business. See OIP, 89 FR at 85265, text accompanying n.11.

²¹⁹ A form letter opposing the Green Governance Standards was received from multiple commenters; all other comments support the Green Governance Standards. See *supra* note 2.

²²⁰ See *supra* note 8.

²²¹ See *supra* note 9.

²²² See LTSE Order, *supra* note 50.

²⁰⁰ See 17 CFR 242.1000 (definitions of “SCI systems,” “indirect SCI systems,” and “critical SCI systems”).

²⁰¹ See Form 1, Exhibit E.

²⁰² See *id.*

²⁰³ See *id.*

²⁰⁴ See 15 U.S.C. 78f(b)(1).

²⁰⁵ See *id.*

²⁰⁶ See *supra* notes 127–128 and accompanying text. See also GIX Rule 9.001 (stating that GIX and FINRA are parties to a regulatory contract, pursuant to which FINRA will perform certain functions described in the Rule 9.000 Series on behalf of GIX).

²⁰⁷ See GIX Rule 1.160(w) (defining GIX Appeals Committee).

²⁰⁸ See GIX Rule 9.349(c).

²⁰⁹ See generally GIX Rule Series 9.200.

²¹⁰ See GIX Rule 8.310.

²¹¹ See GIX Rule 9.218.

²¹² 17 CFR 240.19d–1(c)(2).

²¹³ 15 U.S.C. 78f(b)(6) and (b)(7).

²¹⁴ See 15 U.S.C. 78f(b)(1).

and continued listing on GIX, the obligations of issuers with securities listed on GIX, as well as rules describing the application and qualification process, GIX's proposed listing rules for securities are substantially similar to the analogous rules of LTSE and/or Nasdaq Capital Market ("NCM").²²³ With respect to GIX Rule 14.201, which is virtually identical to the analogous rule of LTSE, GIX requires a company seeking the initial listing of one or more classes of securities on GIX to participate in a free confidential pre-application eligibility review to determine whether the company meets GIX's listing criteria and, if, upon completion of this review, GIX determines that a company is eligible for listing, GIX will notify that company in writing that it has been cleared to submit an original listing application. If, upon completion of this review, the Exchange determines that a company is ineligible for listing, the company may request a review of GIX's determination pursuant to the process set forth in GIX Rule 9.555.

3. Corporate Governance Standards

GIX has proposed corporate governance standards in connection with securities to be listed and traded on GIX that are substantially similar to the analogous corporate governance listing standards of other exchanges.²²⁴ Included in these standards are rules requiring a majority of directors on a listed issuer's board to be independent; rules and independence requirements relating to audit and compensation committees and the oversight of nominations; rules requiring listed issuers to adopt codes of conduct applicable to all their directors, officers and employees; and rules regarding the recovery of erroneously awarded compensation to executive officers.²²⁵ The Commission finds that GIX's proposed corporate governance standards for listed issuers contained in its rules are consistent with the Act.²²⁶

²²³ The Commission has previously determined that the analogous initial and continuing listing standards of LTSE and NCM are consistent with the Act. See LTSE Rules, Chapter 14; Nasdaq Rules Chapter 5000. To be eligible for listing on GIX (unlike LTSE and NCM), a company must be able to demonstrate that it is listed and in good standing on another national securities exchange at the time the Company files its application for listing on GIX and at the time that it lists on GIX. See GIX Rule 14.301(c).

²²⁴ See LTSE Rule Series 14.440, Nasdaq Rule Series 5600, and IEX Rule Series 14.400.

²²⁵ See GIX Rules 14.405; 14.406; and 14.409.

²²⁶ The Commission has previously determined that the analogous corporate governance standards of other exchanges, with which GIX's rules are commensurate, are consistent with the Act. See, e.g., Securities Exchange Act Release No. 48745

The Commission further finds that GIX's rules satisfy the requirements of Section 10A(m) of the Act and Rule 10A-3 thereunder and Section 10C of the Act and Rule 10C-1 thereunder, relating to audit and compensation committees, respectively.²²⁷ GIX's corporate governance standards for listed issuers that require a fully independent audit committee 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-3.²²⁸ In addition, GIX's proposed requirements relating to independent compensation committees for listed issuers would benefit investors by implementing the standards set forth in Rule 10C-1, which requires that the independent directors of a listed issuer oversee executive compensation matters, consider independence criteria before retaining compensation advisers and have responsibility for the appointment, compensation and oversight of these advisers.²²⁹ The corporate governance standards embodied in the listing rules of national securities exchanges, in particular, play an important role in assuring that companies listed for trading on the exchanges' markets observe good governance practices, including a reasoned, fair, and impartial approach for determining the compensation of corporate executives.²³⁰ The Exchange's rules will foster greater transparency, accountability, and objectivity in the oversight of compensation practices of listed issuers and in the decision-making processes of their compensation committees.²³¹

(Nov. 4, 2003), 68 FR 64154 (Nov. 12, 2003); IEX Order, *supra* note 65; and LTSE Order, *supra* note 50.

²²⁷ See 15 U.S.C. 78f(b)(5); 15 U.S.C. 78j-1(m); 15 U.S.C. 78j-3; 17 CFR 240.10A-3; 17 CFR 240.10C-1.

²²⁸ See Securities Exchange Act Release No. 47654 (Apr. 9, 2003), 68 FR 18788 (Apr. 16, 2003).

²²⁹ See Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422, 38425 (June 27, 2012).

²³⁰ See, e.g., Securities Exchange Act Release No. 68640 (Jan. 11, 2013), 78 FR 4554, 4563 (Jan. 22, 2013) (approving SR-NASDAQ-2012-109 relating to rules for compensation committees for listed companies, upon which GIX's proposed rules for compensation committees are based).

²³¹ See *id.* (finding Nasdaq compensation committee rules consistent with the Act). See also Securities Exchange Act Release No. 68639 (Jan. 11, 2013), 78 FR 4570 (Jan. 22, 2013) (order approving NYSE's compensation committee rules, which was cited by Nasdaq as precedent for a subsequent amendment to its own rules that was filed on an immediately effective basis; see Securities Act Release No. 71037 (Dec. 11, 2013), 78 FR 76179 (Dec. 16, 2013) (SR-NASDAQ-2013-147).

4. Trading on GIX

GIX proposes to trade securities pursuant to unlisted trading privileges ("UTP"). GIX Rule 11.120(e) establishes the Exchange's authority to trade securities on a UTP basis. GIX Rule 11.120(e)(1) provides that GIX 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.²³² That rule further provides that any such security would be subject to all GIX rules applicable to trading on GIX, unless otherwise noted.

GIX Rule 11.120(e)(2)(B) establishes additional rules for trading of UTP Exchange Traded Products, which are defined in 11.120(e)(2)(A). GIX Rule 11.120(e)(2)(B)(i) provides that GIX 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 and (c) information about the dissemination of value of the underlying assets or indices. GIX Rule 11.120(e)(2)(B)(ii) establishes certain requirements for members that have customers that trade UTP Exchange Traded Products.²³³ GIX Rule 11.120(e)(2)(D) 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. GIX Rule 11.120(e)(2)(E) 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 GIX Rule 11.120, is consistent with Section 12(f) of the Act and Rule 12f-5 thereunder.²³⁴ Rule 12f-

²³² 15 U.S.C. 78(f).

²³³ GIX Rule 11.120(e)(2)(B)(ii)(a.) (establishing prospectus delivery requirements).

²³⁴ 15 U.S.C. 78(f); 17 CFR 240.12f-5.

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 class or type of security to which the exchange extends unlisted trading privileges.²³⁵ GIX Rule 11.120(e)(1) 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 GIX Rule 11.120 are substantively the same as the existing rules of other national securities exchanges.²³⁶ Accordingly, pursuant to Section 12(f) of the Act and Rule 12f-5 thereunder, GIX will be permitted to extend unlisted trading privileges to securities of the same class, subject to the trading rules of the Exchange.

G. Section 11(a) of the Act

Section 11(a)(1) of the Act²³⁷ 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,²³⁸ 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;²³⁹ (iii) may not 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, GIX requested that the Commission concur with GIX’s conclusion that GIX Members that enter orders into the GIX trading system satisfy the conditions of Rule 11a2-2(T).²⁴⁰ For the reasons set forth below, GIX Members entering orders into the GIX 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.²⁴¹ GIX has represented that GIX does not have a physical trading floor, and the GIX trading system will receive orders from Members electronically through remote terminals or computer-to-computer interfaces.²⁴² The GIX 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. GIX represented that at no time following the submission of an order is a Member or an associated person of the Member able to acquire control or influence over the result or timing of the order’s execution.²⁴³

²⁴⁰ See letter from James G. Buckley, Chief Regulatory Officer, GIX, dated Apr. 2, 2025 (“GIX 11(a) Letter”).

²⁴¹ 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”).

²⁴² See GIX 11(a) Letter, *supra* note 236, at 2.

²⁴³ See *id.* at 3. GIX states that a Member may cancel or modify the order, or modify the instructions for executing the order, after the order has been transmitted, provided that such cancellations or modifications are transmitted from off an exchange floor. 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 235 (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

According to GIX, the execution of a Member’s order is determined solely by what quotes and orders are present in the system at the time the Member submits the order, and the order priority based on the GIX rules.²⁴⁴ Accordingly, a GIX Member and its associated persons do not participate in the execution of an order submitted to the GIX trading system.²⁴⁵

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 GIX 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.²⁴⁶ GIX has represented that the design of the GIX trading system ensures that no Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to GIX.²⁴⁷ Based on GIX’s representation, the GIX trading system satisfies this condition.

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.²⁴⁸ GIX Members

instructions are also transmitted from off the floor”).

²⁴⁴ See GIX 11(a) Letter, *supra* note 236, at 3.

²⁴⁵ See, e.g., BATS Order, *supra* note 50, at 49505; and DirectEdge Exchanges Order, *supra* note 77, at 13164.

²⁴⁶ See, e.g., BATS Order at 49505, *supra* note 50, at 49505; and DirectEdge Exchanges Order, *supra* note 77, 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 237.

²⁴⁷ See GIX 11(a) Letter, *supra* note 236, at 3.

²⁴⁸ See, e.g., BATS Order, *supra* note 50, at 49505; and DirectEdge Exchanges Order, *supra* note 77, 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

²³⁵ 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).

²³⁶ See, e.g., LTSE Rule 14.350 and MEMX Rule 14.1.

²³⁷ 15 U.S.C. 78k(a)(1).

²³⁸ 17 CFR 240.11a2-2(T).

²³⁹ 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”).

trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.²⁴⁹

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

GIX proposes to incorporate by reference certain FINRA rules as GIX rules.²⁵⁰ Thus, for those GIX rules,

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 235 (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").

²⁴⁹ GIX 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 GIX 11(a) Letter, *supra* note 236, at 3-4.

²⁵⁰ See letter from James G. Buckley, Chief Regulatory Officer, GIX, dated March 14, 2025 ("Exemption Request Letter"). GIX proposes to incorporate by reference the following FINRA rules: (1) FINRA Rule 1240 (Continuing Education Requirements), via GIX Rule 2.154 (Continuing Education) (references to FINRA Rules 1210 (Registration Requirements) and 1220 (Registration Categories) within GIX Rule 2.154 shall refer to applicable provisions in GIX Rule 2.160 (Registration Requirements and Restrictions on Membership)); (2) FINRA Rule 2090 (Know Your Customer), via GIX Rule 3.150; (3) FINRA Rules 2111 (Suitability) and 4512 (Customer Account Information), via GIX Rule 3.170 (Suitability); (4) FINRA Rule 2210 (Communications with the Public), via GIX Rule 3.280 (Communications with Customers and the Public); (5) FINRA Rule 2241 (Research Analysts and Research Reports), via GIX Rule 3.230 (Payments Involving Publications that Influence the Market Price of Security); (6) FINRA Rule 2268 (Requirements when Using Pre-dispute Arbitration Agreements for Customer Accounts), via GIX Rule 12.110(c) (Pre-dispute Arbitration Agreements); (7) FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes), via GIX Rule 5.130 (Annual Certification of Compliance and Supervisory Processes); (8) FINRA Rule 3210 (Accounts at Other Broker Dealers and Financial Institutions), via GIX Rule 5.170 (Transactions for or by Associated Persons); (9) FINRA Rule 3230 (Telemarketing), via GIX Rule 3.292 (Telemarketing); (10) FINRA Rule 4110 (Capital Compliance), via GIX Rule 4.110 (Capital Compliance); (11) FINRA Rule 4120 (Regulatory Notification and Business Curtailment), via GIX Rule 4.120 (Regulatory Notification and Business Curtailment); (12) FINRA Rule 4140 (Audit), via GIX Rule 4.140 (Audit); (13) FINRA Rule 4360 (Fidelity Bonds), via GIX Rule 2.240 (Fidelity Bonds); (14) FINRA Rule 4511 (General Requirements), via GIX Rule 4.511; (15) FINRA Rule 4512 (Customer Account Information), via GIX Rule 4.512; (16) FINRA Rule 4512(c) (defining "Allocation Report"), via GIX Rule 11.601 (Consolidated Audit Trail—Definitions); (17) FINRA Rule 4513 (Record of Written Customer Complaints), via GIX Rule 4.513 (Record of Customer Complaints); (18) FINRA Rule 4560

Exchange Members will comply with the GIX rule by complying with the FINRA rule referenced therein. In connection with its proposal to incorporate FINRA rules by reference, GIX requested, pursuant to Rule 0-12,²⁵¹ an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those GIX rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.²⁵² GIX 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 rule that is incorporated by reference is proposed and whenever any such proposed change is approved by the Commission or otherwise becomes effective.²⁵³

Using its authority under Section 36 of the Act,²⁵⁴ the Commission is hereby granting GIX'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 GIX proposes to incorporate by reference.²⁵⁵ This exemption is conditioned upon GIX providing written notice to its Members whenever FINRA proposes to change a rule that GIX 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 SRO resources by avoiding duplicative rule filings based

(Short Interest Reporting), via GIX Rule 3.293 (Short Interest Reporting); (19) FINRA Rule 5270 (Front Running of Block Transactions), via GIX Rule 10.260 (Front Running of Block Transactions); (20) FINRA Rule 5310 (Best Execution and Interpositioning), via GIX Rule 10.220 (Best Execution and Interpositioning); (21) FINRA Rule 5320.03 (Riskless Principal Exception), via GIX Rule 1.160(at) (definition of "Retail Order"); (22) FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes), via GIX Rule 12.110 (Arbitration); and (23) FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes), via GIX Rule 12.110 (Arbitration).

²⁵¹ See 17 CFR 240.0-12.

²⁵² See Exemption Request Letter, *supra* note 246.

²⁵³ See Exemption Request Letter, *supra* note 246, at 3. GIX will provide such notice through a posting on the same website location where GIX 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.*

²⁵⁴ 15 U.S.C. 78mm.

²⁵⁵ The Commission previously exempted other exchanges from the requirement to file proposed rule changes under Section 19(b) of the Act. See, e.g., 24X Order, MEMX Order, MIA Order, MIA Order, and BATS Order, *supra* note 50; IEX Order, *supra* note 65; ISE Mercury Order, *supra* note 67; and DirectEdge Exchanges Order, *supra* note 77.

on simultaneous changes to identical rules of more than one SRO.

V. Conclusion

It is ordered that the application of GIX for registration as a national securities exchange be, and it hereby is, granted.

It is further ordered that operation of GIX is conditioned on the satisfaction of the requirements below:

A. Participation in National Market System Plans

GIX 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

GIX must join the Intermarket Surveillance Group.

C. Minor Rule Violation Plan

A MRVP filed by GIX under Rule 19d-1(c)(2) must be declared effective by the Commission.²⁵⁶

D. Rule 17d-2 Agreement.

An agreement pursuant to Rule 17d-2²⁵⁷ that allocates regulatory responsibility for those matters specified above²⁵⁸ must be declared effective by the Commission, or GIX must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. Participation in Multi-Party Rule 17d-2 Plans

GIX 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

GIX must finalize the provisions of the RSA with its regulatory services provider, as described above, that will specify the GIX and Commission rules for which the regulatory services provider will provide certain regulatory functions, or GIX must demonstrate that

²⁵⁶ 17 CFR 240.19d-1(c)(2).

²⁵⁷ 17 CFR 240.17d-2.

²⁵⁸ See *supra* notes 135-141 and accompanying text.

it independently has the ability to fulfill all of its regulatory obligations.

It is further ordered, pursuant to Section 36 of the Act,²⁵⁹ that GIX shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the FINRA rules that GIX proposes to incorporate by reference into GIX's rules, subject to the conditions specified in this Order.

By the Commission.

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102843; File No. SR-CboeBZX-2025-049]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Various Provisions of Exchange Rule 14.11

April 11, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on March 31, 2025, Cboe BZX Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to various provisions of Exchange Rule 14.11 that would (1) amend the requirement for a registered Market Maker in a UTP Derivative Security or a Derivative Security listed on the Exchange to file with the Exchange a current list identifying Related Instrument Trading Accounts; and (2) eliminate the prohibition that a Member acting as a registered Market Maker in a UTP Derivative Security or a Derivative Security listed on the Exchange may not trade in a Related

Instrument Trading Account that has not been reported to the Exchange.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend certain provisions under Exchange Rule 14.11 to require Members³ that are registered as a Market Maker⁴ in an Unlisted Trading Privilege (“UTP”) Derivative Security⁵ or a Derivative Security⁶ listed on the Exchange (“BZX-Listed Derivative Security”) to provide a list identifying Related Instrument⁷ Trading Accounts⁸ only at the request of the Exchange.⁹ The Exchange also proposes to amend provisions under Rule 14.11 to eliminate the prohibition

³ See Exchange Rule 1.5(n).

⁴ See Exchange Rule 1.5(l).

⁵ See Exchange Rule 1.5(ee).

⁶ See Exchange Rule 1.5(dd).

⁷ “Reference Assets” refers to the currencies, commodities, or derivatives based on one or more currencies or commodities, or derivatives based on a basket or index comprised of currencies or commodities, for which a UTP Derivative Security or BZX-Listed Derivative Security derives its value. See e.g., Exchange Rule 14.11(j)(4). “Related Instruments” refers to the Reference Assets collectively with the underlying physical asset or commodity, related futures or options on futures, and any other related derivatives of the UTP Derivative Security or BZX-Listed Derivative Security. See e.g., Exchange Rule 14.11(j)(4)(A).

⁸ “Related Instrument Trading Accounts” refers to accounts for which Related Instruments are trading in which (i) the Market Maker Holds an interest; (ii) over which it has investment discretion; or (iii) in which it shares in the profits and/or losses. See Exchange Rule 14.11(j)(4)(B)(i)-(iii).

⁹ The Exchange notes that Exchange Rule 22.7 has similar requirements to those at issue in Rule 14.11; however, the Exchange is proposing to amend Rule 22.7 through a separate Rule amendment.

that a Member acting as a registered Market Maker in a UTP Derivative Security or BZX-Listed Derivative Security may not have a Related Instruments Trading Account which has not been reported to the Exchange. The proposal would not limit the Exchange's authority to request, nor limit the registered Market Maker's obligation to produce, any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Market Maker for which Related Instruments are traded.¹⁰ Such provisions apply to any Derivative Security listed pursuant to Rules 14.11(d) Interpretation and Policy .01(a) Securities Linked to the Performance of Indexes and Commodities (Including Currencies), 14.11(e)(4)(G) Commodity-Based Trust Shares, 14.11(e)(5)(G) Currency Trust Shares, 14.11(e)(6)(G) Commodity Index Trust Shares, 14.11(e)(7)(F)(i) Commodity Futures Trust Shares, 14.11(e)(8)(E)(i) Partnership Units, 14.11(e)(9)(F) Trust Units, 14.11(e)(10)(F)(i) Managed Trust Securities, and Rule 14.11(f)(4)(D)(i) Trust Issued Receipts (collectively with Rule 14.11(j) UTP Derivative Securities, the “Market Maker Restriction Rules”). Derivative Securities that are listed and traded on the Exchange pursuant to the Applicable Rules require the Exchange to file separate proposals under Section 19(b) of the Act before listing the Derivative Securities and each of those filings contain references to the current rules.¹¹ The Exchange notes that this

¹⁰ See Exchange Rule 14.11(j)(4)(B).

¹¹ The Exchange notes that the following BZX-Listed Derivatives Securities have been approved by the Commission and are currently listed and traded on the Exchange: see Securities Exchange Act Release Nos. 100216 (May 22, 2024) 89 FR 46514 (May 29, 2024) (SR-CboeBZX-2023-070) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to List and Trade Shares of the ARK 21Shares Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares); 99288 (January 8, 2024) 89 FR 2387 (January 12, 2024) (SR-CboeBZX-2023-028) (Notice of Filing of Amendment No. 5 to a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares); 99290 (January 8, 2024) 89 FR 2338 (January 12, 2024) (SR-CboeBZX-2023-044) (Notice of Filing of Amendment No. 3 to a Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Fund Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares); 100215 (May 22, 2024) 89 FR 46478 (May 29, 2024) (SR-CboeBZX-2023-095) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to List and Trade Shares of the Fidelity Ethereum Fund Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares); 99286 (January 8, 2024) 89 FR 2372 (January 12, 2024) (SR-CboeBZX-2023-072) (Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Franklin Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares); 100218 (May 22, 2024) 89 FR 46499

²⁵⁹ 15 U.S.C. 78mm.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.