third party, either from within the agency or from outside the agency, and are voluntary processes in terms of the decision to participate, the type of process used, and the content of the final agreement. Federal agency experience with ADR has demonstrated that the use of these techniques can result in more efficient resolution of issues, more effective outcomes, and improved relationships between the agency and the other party.

On August 14, 1992 (57 FR 36678), the NRC issued a general policy statement which supports and encourages the use of ADR in NRC activities. On September 8, 2003, the Commission approved an NRC staff proposal to develop and implement a pilot ADR Program to evaluate the use of ADR in handling allegations or findings of discrimination and other wrongdoing. (see the staff requirements memorandum (SRM) for SECY–03–0115, “Alternative Dispute Resolution Review Team (ART) Pilot Program Recommendations for Using Alternative Dispute Resolution (ADR) Techniques in the Handling of Discrimination and Other External Wrongdoing Issues” (ADAMS Accession No. ML030170277). In response to the SRM, the NRC staff proposed a pilot ADR Program to evaluate the use of ADR in the Enforcement Program in SECY–04–0044, “Proposed Pilot Program for the Use of Alternative Dispute Resolution in the Enforcement Program,” dated March 12, 2004 (ADAMS Accession No. ML040550473). The Commission approved the pilot ADR Program (August 13, 2004; 69 FR 50219), and the NRC staff began implementing it in September 2004.

In SECY–06–0102, “Evaluation of the Pilot Program on the Use of Alternative Dispute Resolution in the Allegation and Enforcement Programs,” dated May 5, 2006 (ADAMS Accession No. ML061110254), the NRC staff provided the Commission with the results of the evaluation of the pilot ADR Program. The NRC staff concluded that implementation of the pilot ADR Program was successful. The Program was effective, timely, and generally viewed positively by both internal and external stakeholders. Accordingly, the staff indicated its intent to continue to use ADR in both the Allegation and Enforcement Programs while obtaining Commission approval for the changes necessary to formalize the use of ADR in the Allegation and Enforcement Policy documents. Since ADR program implementation, the NRC has reached settlements in license or licenseless (or contractors) and individuals, and has issued subsequent ADR confirmatory orders in more than 90 enforcement cases.

On December 16, 2010, the NRC Chairman issued a memorandum, “ADR Implementation and Assessment” (ADAMS Accession No. ML12030A228) tasking the NRC staff to conduct a comprehensive review of the ADR program, including determining if it should be expanded. On September 6, 2011 (76 FR 55136), the NRC solicited nominations of individuals to participate on a panel to discuss ADR program implementation and whether changes could be made to make it more effective, transparent, and efficient. On October 17, 2011 (76 FR 64124), the NRC announced its intention to hold a public meeting to solicit feedback from its stakeholders on the ADR Program. During the November 8, 2011 public meeting, the NRC external stakeholders expressed support for the expansion of the ADR Program to the extent possible. For purposes of discussing the expansion of the ADR program, it is necessary to distinguish between the two types of programs, early ADR and post-investigation ADR. These programs differ because of the parties involved. In early ADR, a licensee or contractor engages in mediation with its employee; where as in post-investigation ADR, the NRC engages in mediation with the subject of a potential enforcement action.

In SECY–12–0161, “Status Update, Tasks Related to Alternative Dispute Resolution in the Allegation and Enforcement Programs,” dated November 28, 2012 (ADAMS Accession No. ML12321A145), the NRC staff notified the Commission of its intent to expand the scope of post-investigation ADR and offer it as an option for escalated non-willful (traditional) enforcement cases with proposed civil penalties for a 1-year pilot period. The expansion of the Program does not include violations associated with findings assessed through the ROP. The current program for post-investigation ADR is limited to discrimination and other wrongdoing cases.

At the completion of the 1-year period, the NRC staff will evaluate the results of the pilot ADR Program and seek Commission approval for the permanent inclusion in the Enforcement Policy if the expanded scope is deemed beneficial to the advancement of the agency’s mission.

Paperwork Reduction Act Statement

This Notification does not contain any information collections and, therefore, is not subject to collection requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).
addition, the Applicant, pursuant to Rule 0–12 under the Exchange Act, has requested an exemption under Section 36(a)(1) of the Exchange Act from certain requirements of Rules 6a–1(a) and 6a–2 under the Exchange Act ("Exemption Request"). This order grants the Applicant’s request for exemptive relief, subject to the satisfaction of certain conditions, which are outlined below.

II. Application for Conditional Exemption From Certain Requirements of Exchange Act Rules 6a–1 and 6a–2

A. Filing Requirements Under Exchange Act Rule 6a–1(a)

Exchange Act Rule 6a–1(a) requires an applicant for registration as a national securities exchange to file an application with the Commission on Form 1. Exhibit C to Form 1 requires the applicant to provide certain information with respect to each of its subsidiaries and affiliates. For purposes of Form 1, an "affiliate" is "[a]ny person that, directly or indirectly, controls, is under common control with, or is controlled by, the national securities exchange * * * including any employees." Form 1 defines "control" as "[t]he power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise regarding Longitude S.A., a newly incorporated affiliate of Topaz Exchange, which information includes the Articles of Incorporation of Longitude S.A. Amendment No. 2 also provides financial information for Longitude S.A. Finally, Amendment No. 2 provides an updated organizational chart that reflects the affiliates of Topaz Exchange.

B. Filing Requirements Under Exchange Act Rule 6a–2

Exchange Act Rule 6a–2(a)(2) requires a national securities exchange to update the information provided in Exhibit C within 10 days of any action that causes the information provided in Exhibit C to become inaccurate or incomplete. In addition, Exchange Act Rule 6a–2(b)(1) requires a national securities exchange to file Exhibit D on or before June 30 of each year, and Exchange Act Rule 6a–2(c) requires a national securities exchange to file Exhibit C every three years.

C. Exemption Request

On December 14, 2012, the Applicant requested that the Commission grant an exemption under Section 36 of the Exchange Act, subject to the conditions set forth below, from the requirement under Exchange Act Rule 6a–1 to file the information requested in Exhibits C and D to Form 1 for the "Foreign Indirect Affiliates," as defined below, of the Applicant. In addition, the Applicant requested an exemption, subject to certain conditions, with respect to the Foreign Indirect Affiliates from the requirements under: (1) Exchange Act Rule 6a–2(a)(2) to amend Exhibit C within 10 days if the information in Exhibit C becomes inaccurate or incomplete; and (2) Exchange Act Rules 6a–2(b)(1) and (c) to file periodic updates to Exhibits C and D.

The Applicant is a wholly-owned subsidiary of International Securities Exchange Holdings, Inc. ("ISE Holdings"). ISE Holdings is a wholly-owned subsidiary of U.S. Exchange Holdings, Inc., which is wholly-owned by a German stock corporation, Eurex Frankfurt AG ("Eurex Frankfurt"). Eurex Frankfurt is wholly-owned by a Swiss stock corporation, Eurex Zurich AG ("Eurex Zurich"), which, in turn, is fifty percent (50%) owned by Deutsche Börse AG ("Deutsche Börse") and fifty percent (50%) owned by Eurex Global Derivatives AG ("EGD"). Deutsche Börse has one hundred percent (100%) direct ownership interest in EGD. According to the Applicant, the parent ownership structure of U.S. Exchange Holdings, Inc. is comprised entirely of foreign entities, Eurex Frankfurt, Eurex Zurich, Deutsche Börse and EGD (collectively, the "Foreign Direct Affiliates"), which in turn hold ownership interests, either directly or indirectly, in excess of 25 percent (25%) in a large number of other foreign entities, some of which also own interests in other entities in excess of 25 percent (25%) as well (such Foreign Direct Affiliate-owned entities are referred to, collectively, as the "Foreign Indirect Affiliates").

Because of the limited and indirect nature of its connection to the Foreign Indirect Affiliates, the Applicant believes that the corporate and financial information of the Foreign Indirect Affiliates required by Exhibits C and D of Form 1 would have little relevance to the Commission’s ongoing oversight of the Applicant. The Applicant’s Form 1 application or to the Commission’s ongoing oversight of the Applicant as a national securities exchange if the Commission was to approve the Applicant’s Form 1 application, as amended. In this regard, the Exemption Request states that the Foreign Indirect Affiliates have no ability to influence the management, policies, or finances of the Applicant and no obligation to provide funding to, or ability to materially affect the funding...
of the Applicant.\textsuperscript{14} The Exemption Request also states that: (1) The Foreign Indirect Affiliates have no ownership interest in the Applicant or in any of the controlling shareholders of the Applicant; and (2) there are no commercial dealings between the Applicant and the Foreign Indirect Affiliates.\textsuperscript{15} Further, the Exemption Request states that obtaining detailed corporate and financial information with respect to the Foreign Indirect Affiliates (1) is unnecessary for the protection of investors and the public interest and (2) would be unduly burdensome and inefficient because these affiliates are located in foreign jurisdictions and the disclosure of such information could implicate foreign information sharing restrictions in such jurisdictions.\textsuperscript{16}

As a condition to the granting of exemptive relief, the Applicant has agreed to provide: (i) A listing of the names of the Foreign Indirect Affiliates; (ii) an organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicant; and (iii) in Exhibit C of the Applicant’s Form 1 application, a description of the nature of the Foreign Indirect Affiliates’ affiliation with the Foreign Direct Affiliates and the Applicant. In addition, as a condition to the granting of exemptive relief from the requirements of Exchange Act Rule 6a–2\textsuperscript{(a)(2)}, 6a–2(b)(1), and 6a–2(c), as described above, the Applicant has agreed to provide amendments to the information required under conditions (i) through (iii) above on or before June 30th of each year. Further, the Applicant notes that it will provide the information required by Exhibits C and D for all of its affiliates other than the Foreign Indirect Affiliates, including the Foreign Direct Affiliates.\textsuperscript{17}

III. Order Granting Conditional Section 36 Exemption

Section 6 of the Exchange Act\textsuperscript{18} sets forth a procedure for an exchange to register as a national securities exchange.\textsuperscript{19} Exchange Act Rule 6a–1\textsuperscript{20} requires an application for registration as a national securities exchange to be filed on Form 1 in accordance with the instructions in Form 1. A Form 1 application is not considered filed until all necessary information, including financial statements and other required documents, has been furnished in the proper form.\textsuperscript{21} Exchange Act Rule 6a–2 establishes ongoing requirements to file certain amendments to Form 1.

Section 36(a)(1) of the Exchange Act provides that “the Commission, by rule, regulation, or order, may conditionally provide amendments to the information required under Sections 6(a)(1) through (3) above on or before June 30th of each year. Further, the Applicant has agreed to provide amendments to the information required under conditions (1) through (3) above on or before June 30th of each year. As part of an application for exchange registration, the information included in Exhibits C and D is designed to help the Commission make the determinations required under Sections 6(b) and 19(a) of the Exchange Act,\textsuperscript{23} with respect to the application. The updated Exhibit C and D information required under Exchange Act Rule 6a–2 is designed to help the Commission exercise its oversight responsibilities with respect to national securities exchanges.

Specifically, Exhibit D is designed to provide the Commission with information concerning the financial status of an exchange and its affiliates and subsidiaries,\textsuperscript{24} and Exhibit C provides the Commission with the names and organizational documents of these affiliates and subsidiaries.\textsuperscript{25} Such information is designed to help the Commission determine whether an applicant for exchange registration would have the ability to carry out its obligations under the Exchange Act, and whether a national securities exchange continues to have the ability to carry out its obligations under the Exchange Act.

Since the most recent amendments to Form 1 in 1998, many national securities exchanges that previously were member-owned organizations with few affiliated entities have demutualized. Some of these demutualized exchanges have been consolidated under holding companies with numerous affiliates that, in some cases, have only a limited and indirect connection to the national securities exchange, with no ability to influence the management or policies of the registered exchange and no obligation to fund, or to materially affect the funding of, the registered exchange. The Commission believes that, for these affiliated entities, the information required under Exhibits C and D would have limited relevance to the Commission’s review of an application.

\textsuperscript{14} See Exemption Request, supra note 4, at 2–3.

\textsuperscript{15} See Exemption Request, supra note 4, at 3.

\textsuperscript{16} See id. The Applicant also believes that providing the information required by Exhibits C and D with respect to the Foreign Indirect Affiliates could raise confidentiality concerns because many of the Foreign Indirect Affiliates are not public companies. Id.

\textsuperscript{17} See Exemption Request, supra note 4, at 3.


\textsuperscript{19} Specifically, Section 6(a) of the Exchange Act states that “[a]n exchange may be registered as a national securities exchange * * * by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.” Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

\textsuperscript{20} 17 CFR 240.6a–1(a).

\textsuperscript{21} 17 CFR 202.3(b)(2). See also supra note 9.

\textsuperscript{22} 15 U.S.C. 78mm(a)(1).
for exchange registration or to its oversight of a registered exchange. Based on the Applicant’s representations, the indirect nature of the relationship between the Applicant and the Foreign Indirect Affiliates, and the information that the Applicant will provide with respect to the Foreign Direct Affiliates and the Foreign Indirect Affiliates, the Commission believes that it will have sufficient information to review the Applicant’s Form 1 application and to make the determinations required under Sections 6(b) and 19(a) of the Exchange Act with respect to its application for registration as a national securities exchange.\(^\text{27}\) The Commission believes, further, that it will have the information necessary to oversee the Applicant’s activities as a national securities exchange if the Commission were to approve the Applicant’s Form 1 application. In particular, the Commission notes that the Applicant has represented that it would have no direct connection to the Foreign Indirect Affiliates, that the Foreign Indirect Affiliates would have no ability to influence the management or policies of the Applicant, and that the Foreign Indirect Affiliates would have no obligation to fund, or ability to materially affect the funding of, the Applicant. In addition, the Commission notes that the Applicant represented that: (1) The Foreign Indirect Affiliates have no ownership interest in the Applicant or in any of the controlling equity holders of the Applicant; and (2) there are no commercial dealings between the Applicant and the Foreign Indirect Affiliates.\(^\text{28}\)

Given the limited and indirect relationship between the Applicant and the Foreign Indirect Affiliates, as described above, the Commission believes that the detailed corporate and financial information required in Exhibits C and D with respect to the Foreign Indirect Affiliates is unnecessary for the Commission’s review of the Applicant’s Form 1 application and would be unnecessary for the Commission’s oversight of the Applicant as a registered national securities exchange following any Commission approval of its Form 1 application.

For the reasons discussed above, the Commission finds that the conditional exemption relief requested by the Applicant is appropriate in the public interest and is consistent with the protection of investors.

It is ordered, pursuant to Section 36 of the Exchange Act,\(^\text{29}\) that the Applicant is exempt from the requirements to: (1) Include in its Form 1 application the information required in Exhibits C and D to Form 1 with respect to the Foreign Indirect Affiliates; and (2) with respect to the Foreign Indirect Affiliates, update the information in Exhibits C and D to Form 1 as required by Exchange Act Rules 6a–2(a)(2), 6a–2(b)(1), and 6a–2(c) subject to the following conditions:

(i) The Applicant must provide a list of the names of the Foreign Indirect Affiliates;  
(ii) The Applicant must provide an organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicant; and  
(iii) as part of Exhibit C to the Applicant’s Form 1 Application, the Applicant must provide a description of the nature of the affiliation between the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicant.

In addition, the Applicant must provide amendments to the information required under conditions (i) through (iii) above on or before June 30th of each year.

By the Commission.

Kevin M. O’Neill,  
Deputy Secretary.

\(^{27}\) 15 U.S.C. 78f(b) and 78s(a), Section 6(b) of the Exchange Act enunciates certain determinations that the Commission must make with respect to an exchange before granting the registration of the exchange as a national securities exchange. The Commission will not grant an exchange registration as a national securities exchange unless the Commission determines that the exchange meets these requirements. See Regulation ATS Adopting Release, supra note 9, at IV.B.

\(^{28}\) See Exemption Request, supra note 4, at 3.

\(^{29}\) 15 U.S.C. 78mm.