

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91019; File No. SR-LTSE-2021-01)

January 29, 2021

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend LTSE Rule 14.501 to Specify the Process for Enforcing Compliance with LTSE Rule 14.425 for Listed Companies

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 January 19, 2021, Long-Term Stock Exchange, Inc. (“LTSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

LTSE proposes to amend LTSE Rule 14.501 to specify the process for enforcing compliance with LTSE Rule 14.425 for listed companies.

The text of the proposed rule change is available at the Exchange’s website at <https://longtermstockexchange.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 14.501(d)(2)(A)(iii) to specify the process for enforcing compliance with the Long-Term Policies pursuant to LTSE Rule 14.425 under LTSE Rule Series 14.500.³ LTSE Rule 14.425(a) requires Companies to adopt and publish the following policies: a Long-Term Stakeholder Policy; a Long-Term Strategy Policy; a Long-Term Compensation Policy; a Long-Term Board Policy; and a Long-Term Investor Policy (collectively, the “Policies”). While Companies have flexibility to develop appropriate Policies for their businesses, each of the Policies must be consistent with the set of principles articulated in LTSE Rule 14.425(b) (collectively, the “Principles”).⁴ Companies also are required to at least annually review their Policies, make them publicly available and free of charge on or through their websites, and provide related disclosures in certain filings with the Commission, as provided for in LTSE Rule 14.425(c).

The Exchange enforces the provisions of LTSE Rule 14.425 by ensuring that each LTSE-listed issuer has addressed all of the elements enumerated in each of the Policies, consistent with the Principles, and has made the Policies publicly available without cost.⁵ A number of rules in the Rulebook enable the Exchange to ensure such compliance. First, with respect to

³ See LTSE Rule 14.001 (“The consequences of a failure to meet LTSE’s listing standards are contained in the LTSE Rule Series 14.500.”).

⁴ See Securities Exchange Act Release No. 86722 (August 21, 2019), 84 FR 44953 (August 27, 2019) (order approving proposed rule change to adopt LTSE Rule 14.425).

⁵ Id. at 44954.

identification of a deficiency, LTSE Rule 14.500(a) provides that LTSE staff is responsible for identifying deficiencies that may lead to delisting. Additionally, LTSE Rule 14.410 requires a Company provide the Exchange with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the LTSE Rule Series 14.400, which includes Rule 14.425. Second, the Exchange retains the authority to elicit necessary information for reaching a deficiency determination, as LTSE Rule 14.207(a)(1) provides that the Exchange may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a Company's continued listing, and a Company may be denied continued listing if it fails to provide such information within a reasonable period of time.⁶

Third, LTSE Rule 14.501 sets forth the provisions regarding the Exchange's process for notifying Companies regarding different types of deficiencies and their corresponding consequences. There are four types of Company deficiency notifications that the Exchange may issue pursuant to LTSE Rule 14.501(a): (i) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting; (ii) notifications of deficiencies for which the Company may submit a plan of compliance for staff review; (iii) notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and (iv) Public Reprimand Letters. LTSE Rule 14.501(d) identifies the deficiencies that fall within each of these four categories.⁷

The proposed rule change would amend LTSE Rule 14.501(d)(2)(A)(iii) to specify that

⁶ In addition, the Exchange plans to monitor Company compliance with Rule 14.425 annually and on an ad hoc basis.

⁷ LTSE Rule 14.501(d) provides that in case of a deficiency not specified in subparagraphs (1)-(4), LTSE staff will issue either a Staff Delisting Determination or a Public Reprimand Letter.

deficiencies relating to LTSE Rule 14.425 would include those for which a Company may submit a plan of compliance (“Plan of Compliance”) for staff review, similar to how other corporate governance rules are handled generally in LTSE Rule 14.501(d)(2)(A)(iii).⁸ The timeline for such a Plan of Compliance is governed by LTSE Rule 14.501(d)(2)(C), which establishes that a Company has 45 calendar days to submit a plan to regain compliance. LTSE staff may extend this deadline for up to an additional 5 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension. The Exchange believes that this time period appropriately balances the interests of the Exchange in ensuring compliance with its listing standards with the application of principles-based listing standards by the Company.⁹

The process for reviewing such a Plan of Compliance is set forth in LTSE Rule 14.501(d)(2)(B) and would be unchanged. Under this subparagraph (B), LTSE may provide the Company with up to 180 days to regain compliance (with certain exceptions), issue a Staff

⁸ See, e.g., LTSE Rules 14.408(a) (Meetings of Shareholders), 14.408(c) (Quorum), 14.411 (Review of Related Party Transactions), 14.412 (Shareholder Approval), 14.406 (Code of Conduct), 14.407(a)(4)(D) (Partner Meetings of Limited Partners), 14.407(a)(4)(E) (Quorum of Limited Partnerships), 14.407(a)(4)(G) (Related Party Transactions of Limited Partnerships), 14.413 (Voting Rights), or 14.414 (Internal Audit Function). The proposed rule change also would remove two erroneous “or”s in LTSE Rule 14.501(d)(2)(A)(iii).

⁹ Notwithstanding the mandated period to submit a Plan of Compliance and regain compliance under LTSE Rule 14.501(d)(2), as set forth in LTSE Rule 14.501(c) and repeated in LTSE Rule 14.207(b)(2), “a listed Company that receives a notification of deficiency from the Exchange is required to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, and describing each specific basis and concern identified by the Exchange in reaching its determination that the Company does not meet the listing standard.” For avoidance of doubt, a request for information by LTSE staff pursuant to LTSE Rule 14.207(a)(1), absent a notification of deficiency, will not require a public announcement by the subject Company pursuant to LTSE Rules 14.501(c) or 14.207(b)(2).

Delisting Determination letter, or issue a Public Reprimand Letter in accordance with LTSE Rule 14.501(d)(4). As set forth in LTSE Rule 14.500(a), a Public Reprimand Letter or Staff Delisting Determination, upon timely request by a Company, is subject to review by a Listings Review Committee, which will adjudicate the request in accordance with procedures and timelines set forth in LTSE Rules 14.502, 14.504 and 14.505.

LTSE Rule 14.425 provides Companies flexibility in developing what they believe to be appropriate Policies for their businesses; however, each of the required Policies must include certain minimum elements, and must be consistent with the Principles. The Exchange has represented to the Commission that it will enforce the provisions of LTSE Rule 14.425 by ensuring that each Company has addressed all of the requirements enumerated for each of the prescribed Policies, that the Company's Policies are consistent with the Principles, and it has made the Policies publicly available without cost.¹⁰ Additionally, LTSE Rule 14.425(c) mandates that Companies annually review their Policies because the Exchange has anticipated that, over time, Companies may choose to or need to recalibrate their Policies with new objectives or initiatives, provided that the amended Policies continue to align with the Principles noted in LTSE Rule 14.425. The Exchange believes the ability to tailor Policies, if necessary, to changing circumstances, while remaining anchored to the Principles, is essential for ensuring that the Policies are effective and meaningful tools for supporting long-term value creation for Companies and their investors.

The Exchange holds that, in case of a deficiency, Companies may achieve compliance by

¹⁰ See supra note 4.

changing Policies or practices¹¹ related to the deficiency, amending the applicable Policies or some combination of both, provided that the changes are consistent with the Principles discussed in LTSE Rule 14.425. The Exchange's objective is to help foster long-term value creation for each Company and the Exchange believes that providing an opportunity for remediation to Companies that face a deficiency with respect to LTSE Rule 14.425 will aid in achieving that goal by allowing Companies to formulate effective Policies tailored to Company-specific needs. At all times, the Exchange may exercise its broad discretionary authority under LTSE Rule 14.101 to suspend or delist Companies based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange to protect investors and the public interest, among other objectives.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, particularly those investors with a long-term focus. Further, the

¹¹ For the avoidance of doubt, each Company shall be solely responsible for ensuring any changes in its practices to conform to its Policies do not violate any legal, regulatory, contractual, or other requirements applicable to the Company.

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

Exchange believes the proposal is not designed to permit unfair discrimination between issuers or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange, for the reasons set forth below.

The Exchange believes that the proposed rule change brings deficiencies with respect to LTSE Rule 14.425 in alignment with other LTSE rules pertaining to corporate governance that allow a Company to submit a Plan of Compliance in the case of a deficiency. The proposed rule change furthers the Exchange's objective to promote long-term value creation while retaining effective enforcement mechanisms for deficiencies with respect to LTSE Rule 14.425. Pursuant to the proposed amendment, Companies will be provided an opportunity to regain compliance with LTSE Rule 14.425 by formulating appropriate Policies that remain anchored to the Principles enumerated in LTSE Rule 14.425 through an existing process that has already been determined to be consistent with the Act in that it removes impediments to and perfects the mechanism of a free and open market and a national market system, consistent with the protection of investors and the public interest.¹⁴

The Exchange believes that its proposed rule change is fair and not unfairly discriminatory because it is applicable to all listed Companies that experience a deficiency with respect to LTSE Rule 14.425 and is part of the adjudicatory process set forth in the LTSE Rule Series 14.500.¹⁵

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

The Exchange does not believe that the proposed rule change would impose any burden

¹⁴ See Securities Exchange Act Release No. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (order approving the application of Long Term Stock Exchange, Inc. for registration as a National Securities Exchange).

¹⁵ See supra note 3.

on competing venues that is not necessary or appropriate in furtherance of the purposes of the Act. The degree to which the proposed amendment could impose any burden on intermarket competition is extremely limited because other national securities exchanges may propose similar listing standards with appropriate remediation mechanisms and issuers are able to list on other national securities exchanges. Further, issuers that do not wish to meet the Exchange's listing standards also are able to list on other national securities exchanges.

LTSE also does not believe that the proposed rule change will result in any burden on intramarket competition since it is applicable to all listed Companies without differentiation. Consequently, LTSE does not believe that the proposed change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-LTSE-2021-01 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-LTSE-2021-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without

change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-LTSE-2021-01, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).