

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92752; File No. SR-LTSE-2021-04)

August 25, 2021

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Director “Business Relationships” Provision and Definition of “Family Member” For Purposes of LTSE Rule 14.405(a)(2) and Supplementary Material .01 (Definition of Independence)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on August 19, 2021, Long-Term Stock Exchange, Inc. (“LTSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 14.405(a)(2) and Supplementary Material .01 (Definition of Independence) under LTSE Rule 14.405(a) (“Supplementary Material”) to (i) adopt provisions conforming LTSE’s independence standards with respect to listed company (“Company”)⁴ directors’ “business relationships” with the corresponding standards of the New York Stock Exchange (“NYSE”) Rule 303.A.02(b)(v) and relevant parts of the related NYSE Commentary and Disclosure Requirement for NYSE-listed Companies seeking to dually list on LTSE, and (ii) amend the definition of “Family Member” solely for purposes of director

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ “Company” means the issuer of a security listed or applying to list on the Exchange. See LTSE Rule 14.002(a)(5).

independence determinations under LTSE Rule 14.405(a)(2). LTSE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,⁵ and Rule 19b4(f)(6) thereunder,⁶ which renders the proposed rule change effective upon filing with the Commission.

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 14.405(a)(2) and related Supplementary Material to adopt a provision conforming LTSE’s independence standards with respect to directors’ business relationships with the corresponding standard of NYSE Rule 303.A.02(b)(v) and related Commentary and Disclosure Requirement, in order to accommodate NYSE-listed Companies seeking to dually list⁷ their securities on LTSE. The Exchange also proposes to amend the definition of “Family Member” solely for purposes of director independence under LTSE Rule

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ See LTSE Rule 14.210(a) (permitting a Company to have a class of securities that has been approved for listing on another national securities exchange).

14.405(a)(2)⁸ to conform it to the corresponding definitions of the NYSE⁹ and the Nasdaq Stock Market LLC (“Nasdaq”).¹⁰

LTSE rules require Companies to meet certain standards related to director independence, including that a majority of the board of the directors of the Company be independent directors,¹¹ and that the Company’s audit, compensation, and nominating¹² committees be comprised solely of independent directors.¹³ LTSE Rule 14.405(a)(2) defines “Independent Director” as “a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company’s board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.”

LTSE Rule 14.405(a)(2) also provides a list of certain relationships that preclude a board finding of director independence¹⁴ (the “Bright-Line Independence Tests”), including a director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company

⁸ This definition of Family Member is not applicable to LTSE Rule 5.110 (Supervision), which pertains to Member supervision and aligns with a corresponding FINRA rule.

⁹ See General Commentary to Section 303A.02(b) of NYSE Listed Company Manual (defining “immediate family member”).

¹⁰ See Nasdaq Rule 5605(a)(2) (defining “Family Member”).

¹¹ LTSE Rule 14.405(b)(1).

¹² If the Company does not have a nominating committee, under LTSE Rule 14.405(e), nominees for directors must be selected or recommended by independent directors constituting a majority of the board’s independent directors in a vote in which only independent directors participate.

¹³ See LTSE Rule 14.405(c)(3)(A) (regarding audit committee composition); LTSE Rule 14.405(d)(2)(A) (regarding compensation committee composition); LTSE Rule 14.405(e)(1) (regarding nominating committee composition).

¹⁴ See Supplementary Material, LTSE Rule 14.405(a)(2).01 (noting that “[t]hese objective measures provide transparency to investors and Companies, facilitate uniform application of the rules, and ease administration”).

received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's (i.e., that of the organization or the Company) consolidated gross revenues for that year, or \$200,000, whichever is more (with certain exceptions).¹⁵ This rule is referred to as the "business relationships" provision.¹⁶ Related Supplementary Material provides further guidance to Companies regarding the significance of director independence and application of the independence standards.

The proposed rule change would establish an alternative business relationships provision based on the corresponding provisions of the NYSE Rule 303.A.02(b)(v)¹⁷ and adopt relevant parts of the related NYSE Commentary and Disclosure Requirement, solely applicable to NYSE-listed Companies seeking to dually list on LTSE. While NYSE's and LTSE's respective business relationship provisions are similar, the NYSE standard employs different percentages and minimums. Specifically, NYSE uses a threshold of 2% of the recipient's consolidated gross revenues or \$1 million, whichever is more. In many situations, the NYSE provision will be more restrictive with a threshold of 2% versus 5%. However, at the lowest levels, the LTSE standard is more restrictive with a minimum of \$200,000 versus \$1 million.¹⁸ The Commentary and

¹⁵ See LTSE Rule 14.405(a)(2)(D) (exceptions to this rule apply for (i) payments arising solely from investments in the Company's securities; or (ii) payments under non-discretionary charitable contribution matching programs).

¹⁶ LTSE's "business relationships" provision in Rule 14.405(a)(2)(D) is identical to Nasdaq Rule 5605(a)(2)(D).

¹⁷ NYSE Rule 303.A.02(b)(v) precludes situations where "[t]he director is a current employee, or an immediate family member is a current executive officer, of a company that has made payments to, or received payments from, the listed company for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of \$1 million, or 2% of such other company's consolidated gross revenues."

¹⁸ In addition, the NYSE standard only covers the prior three fiscal years (not including current year as per the LTSE standard) and does not include Family Members who are partners or controlling shareholders of the subject organization. The LTSE standard uses

Disclosure Requirement noted under NYSE Rule 303.A.02(b)(v) clarify application of the rule and call for disclosure of Company contributions to tax exempt organizations in which any independent director serves as an executive officer provided that the same financial thresholds of Rule 303.A.02(b)(v) are met.

As a result of the differences discussed above, a NYSE-listed Company seeking to dually list on LTSE may have to reassess the independence of its directors notwithstanding the fact that the Company is already listed on the NYSE. Differences in comparable listing standards based on the same general principles (e.g., ensuring directors exercise independent judgment) may be burdensome for Companies needing to conduct duplicative analyses of director independence.¹⁹ To better accommodate dual listings of NYSE-listed companies, the proposed rule change would provide an alternative business relationships provision in a new paragraph (H) to LTSE Rule 14.405(a)(2) substantially identical to NYSE Rule 303.A.02(b)(v) and add relevant parts of NYSE's related Commentary and Disclosure Requirement to LTSE Supplemental Material, solely for NYSE-listed Companies.

The Exchange is also proposing to amend the definition of "Family Member" solely for purposes of director independence under LTSE Rule 14.405(a)(2) to mean "a person's spouse,

the term "organizations" instead of "companies" and thus may be interpreted to be broader in scope in that respect.

¹⁹ See Amendment No. 3 to SR-NASDAQ 2019-049 at 8 (noting that "Nasdaq has heard from its listed companies and their legal counsel that the current situation, where each market has a different definition [of "Family Member"], complicates the preparation by listed companies of director and officer questionnaires that the companies need in order to analyze director independence. In particular, this creates an added and unnecessary burden when a company transfers its listing from one national securities exchange to another. In such case, a director may have already filled out an annual questionnaire based on the prior listing exchange's definition of a family member, but need[s] to answer additional questions because the definition of the exchange the listing is transferred to is phrased differently").

parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and anyone (other than domestic employees) who shares such person's home." Under the current LTSE Rule 14.405(a)(2), "Family Member" means "a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home."²⁰ The purpose of this rule change is to exclude domestic employees who share the director's home (given that the definition is not meant to cover commercial relationships), and stepchildren who do not share the director's home (in which case, depending on facts and circumstances, such relationships may be attenuated in nature), from the type of relationships that always preclude a board from finding that a director is independent, as described below.²¹

The proposed rule change would also conform LTSE's definition of a "Family Member" for purposes of Rule 14.405(a)(2) to the corresponding definition of "Family Member" applicable to Companies listed on the NYSE and Nasdaq. Depending on the facts and circumstances, minor variations²² between LTSE's current definition and that of NYSE or Nasdaq could create need for interpretation and require additional independence assessments for NYSE or Nasdaq-primary listed Companies seeking to dually list securities on LTSE or transfer their listing to LTSE. To reduce this additional compliance burden on such Companies, the Exchange's proposed definition of "Family Member" would be identical to NYSE and Nasdaq's

²⁰ See LTSE Rule 14.405(a)(2).

²¹ For the avoidance of doubt, a stepchild who shares the same home with a director would continue to be considered a Family Member under the Bright-Line Independence Tests, because the definition of a Family Member will include anyone (other than domestic employees) who shares the director's home.

²² For example, the current LTSE definition of "Family Member" in Rule 14.405(a)(2) does not exclude domestic employees residing in the director's home.

corresponding definitions for purposes of determining director independence.²³ This revision will not affect the additional independence criteria for audit committee members set forth in LTSE Rule 14.405(c)(2), which incorporate the independence requirements of SEC Rule 10A-3 promulgated under the Act.²⁴

Notwithstanding these changes, LTSE notes that Company boards must affirmatively determine that directors do not have relationships that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director pursuant to LTSE rules 14.405(a)(2) and 14.405(a)(2).01. To comply with LTSE's rules, LTSE will expect the boards of listed Companies to continue to elicit through director questionnaires the information necessary to make independence determinations, which will need to include questions about stepchild relationships. LTSE believes that it is appropriate for the board to review a relationship between a director and a stepchild who does not share a home with the director or a relationship between a director and a domestic employee under such facts and circumstances test. The board's assessment goes beyond applying the Bright-Line Independence Tests to ensure that any individual serving as an independent director has no relationship that would impair his or her independence.

²³ Section 303A.02 of the NYSE Listed Company Manual states that “[a]n ‘immediate family member’ includes a person’s spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person’s home.” The definition of “Family Member” for purposes of Nasdaq Listing Rule 5605(a)(2) was modified to be identical to that of NYSE. See Securities Exchange Act Release No. 88210 (February 13, 2020), 85 FR 9816 (February 20, 2020).

²⁴ 15 U.S.C. 78f.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, the Exchange believes that the proposal is not designed to permit unfair discrimination between issuers or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange, for the reasons set forth below.

By aligning certain of the Exchange's corporate governance requirements more closely with those of the NYSE and Nasdaq, as explained above, the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market. The proposed rule change with respect to director business relationships and the definition of Family Member is consistent with the Act in that it adopts a definition of director independence that has already been approved by the Commission and has been in force for nearly 20 years.²⁷

LTSE's current business relationships provision set forth in LTSE Rule 14.405(a)(2)(D) is identical to that of Nasdaq Rule 5605(a)(2)(D). Companies that utilize Nasdaq as their primary

²⁵ Id.

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003), available at https://www.sec.gov/rules/sro/34-48745.htm#P83_24538 (noting that "the Commission believes that these proposed rule changes, as amended, are reasonable and appropriate and serve the interests of the investing public").

listing exchange and seek to dually list on LTSE do not currently have any added compliance burden with respect to this rule. As drafted, the proposed rule change would apply only to NYSE-primary listed Companies seeking to dually list on LTSE and remove their additional compliance burden of having to assess director independence in accordance with disparate Bright-Line Independence Tests regarding director business relationships. A Company seeking a primary listing on LTSE or a Company with a primary listing exchange other than NYSE would be required to satisfy the current business relationships provision in Rule 14.405(a)(2)(D).

The Exchange also believes that its proposed rule change is fair and not unfairly discriminatory because it alleviates the additional compliance burdens currently faced by NYSE-primary listed Companies that seek to dually list on LTSE. Given that LTSE Rule 14.405(a)(2)(D) currently in effect is identical to the corresponding provision of Nasdaq Rule 5605(a)(2)(D), the proposed rule change brings NYSE-primary listed Companies in parity with Nasdaq-primary listed Companies if they seek to dually list their securities on LTSE.

The proposed rule change with respect to modification of the definition of “Family Member” in LTSE Rule 14.405(a)(2) to conform to the corresponding definition of Nasdaq Rule 5605(a)(2) and NYSE Rule 303.A.02 also alleviates the compliance burden on LTSE dually-listed Companies. In the recent past, the Commission has approved Nasdaq’s proposed modification of Rule 5605(a)(2)’s definition of “Family Member” for purposes of director independence determinations.²⁸ Prior to such modification, the Nasdaq definition in Rule 5605(a)(2) was identical to that of LTSE Rule 14.405(a)(2). Nasdaq also noted in Amendment No. 3 to its related rule filing proposal that its purpose was to alleviate unnecessary burdens

²⁸ See Securities Exchange Act Release No. 88210 (February 13, 2020), 85 FR 9816 (February 20, 2020).

posed on listed companies due to differences in phrasing of corresponding rules across exchanges.²⁹ Specifically, LTSE Rule 14.405(a)(2) includes directors' domestic employees and stepchildren in the definition of "Family Member," as described above, even though based on facts and circumstances, relationships with stepchildren may be attenuated and those with domestic employees are generally commercial in nature. The Commission has previously approved the proposed definition as consistent with Section 6(b)(5) of the Act.³⁰ As such, LTSE believes that Commission approval of this proposed rule change would be consistent with its prior decision and promote competition.

LTSE holds that it is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the Company that would impair their independence. The Company's board has a responsibility to make an affirmative determination that no such relationships exist. The proposed rule change furthers the Exchange's objective to support Companies in long-term value creation by removing the need for burdensome and duplicative independence assessments while retaining effective and longstanding mechanisms for ensuring director independence.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. These changes are intended to alleviate compliance burdens on dually-listed Companies by conforming

²⁹ See SR-NASDAQ 2019-049 Amendment No. 3 at 11. Amendment No. 3 replaces and supersedes the original proposal in its entirety and is available at https://listingcenter.nasdaq.com/assets/rulebook/nasdaq/filings/SR-NASDAQ-2019-049_Amendment_3.pdf.

³⁰ See Securities Exchange Act Release No. 88210 (February 13, 2020), 85 FR 9816 (February 20, 2020).

LTSE rules with those of two other exchanges in the case of the definition of “Family Member,” and one other exchange with respect to the business relationships provision regarding director independence determinations where such Company is seeking to dually list its securities. Thus, the proposed rule change would eliminate requirements that burden issuers without an offsetting benefit in protecting shareholders. As such, these changes are neither intended to, nor expected to, impose any burden on competition.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative 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 Act³¹ and Rule 19b-4(f)(6)(iii) thereunder.³²

A proposed rule change filed under Rule 19b-4(f)(6)³³ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁴ the Commission may designate a shorter time if such action is consistent with the protection of

³¹ 15 U.S.C. 78s(b)(3)(A)(iii).

³² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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 Exchange has satisfied this requirement.

³³ 17 CFR 240.19b-4(f)(6).

³⁴ 17 CFR 240.19b-4(f)(6)(iii).

investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange states that it does not believe that the proposal raises any new or novel issues not previously considered by the Commission in that the provisions at issue have been approved by the Commission and in effect at other exchanges for a considerable period. In addition, the Exchange has represented that it anticipates that its first dual listings will take effect by the end of August 2021 and that the proposed rule change will be helpful for the companies that plan to list on this timeline. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues and is consistent with adopted rules on other exchanges. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.³⁵

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 change should be approved or disapproved.

³⁵ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2021-04 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-2021-04. 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-2021-04 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.³⁶

Jill M. Peterson
Assistant Secretary

³⁶ 17 CFR 200.30-3(a)(12).