



8011-01
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-86327; File No. SR-LTSE-2019-01]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Adopt Rule 14.425, Which Would Require Companies Listed on the Exchange to Develop and Publish Certain Long-Term Policies

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 June 25, 2019, the Long-Term Stock Exchange, Inc. (“LTSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),³ and Rule 19b-4 thereunder,⁴ the Exchange is filing with the Commission a proposed rule change to adopt new Rule 14.425 (Long-Term Policies), which would require companies listed on the Exchange to develop and publish certain policies that the Exchange believes will facilitate long-term focus and value creation. The text of the proposed rule change is available at the Exchange’s website at www.longtermstockexchange.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

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 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 on the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 10, 2019, the Commission granted the Exchange’s application for registration as a national securities exchange under Section 6 of the Act,⁵ including approval of rules applicable to the qualification, listing and delisting of companies on the Exchange. The Exchange is proposing to enhance its listing requirements by requiring companies listed on the Exchange (“LTSE-Listed Issuers”) 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, as described further below. These policies must be consistent with the set of principles described below.

Background

Many academics, commentators, market participants,⁶ as well as current members of the Commission⁷ have voiced concerns regarding “short-termism” and the risk that some investors’

⁵ See Securities Exchange Act Release No. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019).

⁶ See, e.g., McKinsey & Company, McKinsey Global Institute, Measuring the Economic Impact of Short-Termism (February 2017), available at <http://www.mckinsey.com/~media/mckinsey/global%20themes/long%20term%20capital>

ism/where%20companies%20with%20a%20long%20term%20view%20outperform%20their%20peers/measuring-the-economic-impact-of-short-termism.ashx (“Our findings show that companies we classify as ‘long term’ outperform their shorter-term peers on a range of key economic and financial metrics.”); Aspen Institute, American Prosperity Project (December 2016), available at https://assets.aspeninstitute.org/content/uploads/2017/01/American-Prosperity-Project_Policy-Framework_FINAL-1.3.17.pdf (“Perverse incentives in our corporate governance system undermine the health of capitalism itself. Short-termism is baked into our tax system and is evident in the decisions, regulations and rules that govern corporations and capital markets. Changes to the rules of the game are a necessary step to rebuild the public’s trust in our economic system.”); Martin Lipton, The New Paradigm (January 11, 2017), available at <http://www.wlrk.com/docs/thenewparadigm.pdf> (“The economic impact of a short-term myopic approach to managing and investing in businesses has become abundantly clear and has been generating rising levels of concern across a broad spectrum of stakeholders, including corporations, investors, policymakers and academics. The proposition that short-term financial activists and reactive corporate behavior spur sustainable improvements in corporate performance, and thereby systemically increase rather than undermine long-term economic prosperity and social welfare, has been overwhelmingly disproved by the real world experience of corporate decision-makers as well as a growing body of academic research.”); Chief Justice Leo Strine, Who Bleeds When the Wolves Bite? A Flesh-and-Blood Perspective on Hedge Fund Activism and Our Strange Corporate Governance System (April 2017), available at <https://ssrn.com/abstract=2921901> (“Rather, human investors would see great benefit from reforms encouraging the agents responsible for their money to adopt the long-term horizon held by their principals, i.e., human investors.”); CECP and KKS Advisors, The Economic Significance of Long-Term Plans (November 2018), available at <http://cecp.co/wp-content/uploads/2018/11/Economic-Significance-Final-Report.pdf> (“Short-termism in capital markets has increasingly become a concern for both companies and the investor community” and explaining that the authors of the report “find evidence that better quality disclosure on themes like corporate purpose and competitive positioning is linked to larger capital market reactions”); Travis Baratko, A Times-Mirror Conversation With Sen. Mark Warner, *The Loudoun Times-Mirror* (July 27, 2015), available at http://www.loudountimes.com/news/article/a_loudoun_times_mirror_conversation_with_sen._mark_warner432 (quoting Senator Mark Warner as noting that “[P]eople being investors who are only focused on short-termism, too often you can squeeze a quarterly profit out at the expense of a long-term value proposition.”).

⁷ See, e.g., Chairman Jay Clayton, Statement Announcing SEC Staff Roundtable on Short-Term / Long-Term Management of Public Companies, Our Periodic Reporting System and Regulatory Requirements (May 20, 2019), available at <https://www.sec.gov/news/public-statement/clayton-announcement-short-long-term-management-roundtable> (“An undue focus on short-term results among companies may lead to inefficient allocation of capital, reduce long-term returns for Main Street investors, and encumber economic growth”; “As a result of increased life expectancy and a shift from defined benefit plans (e.g., pensions) to defined contribution plans (e.g.,

focus on short-term results could put pressure on companies to sacrifice long-term value creation in order to reach quarterly or other short-term expectations. In addition, some commenters believe that short-term pressures placed on companies have discouraged some newer companies from conducting initial public offerings⁸ and have led some public companies to go private.⁹

401(k)s and IRAs), the investing interests and needs of our Main Street investors have changed. Put simply, our Main Street investors are more than ever focused on long-term results.”); Chairman Jay Clayton, Statement on Investing in America for the Long Term (Aug. 17, 2018), available at <https://www.sec.gov/news/public-statement/statement-clayton-081718> (“The President has highlighted a key consideration for American companies and, importantly, American investors and their families — encouraging long-term investment in our country. Many investors and market participants share this perspective on the importance of long-term investing. Recently, the SEC has implemented — and continues to consider — a variety of regulatory changes that encourage long-term capital formation while preserving and, in many instances, enhancing key investor protections.”); SEC, Press Release, SEC Solicits Public Comment on Earnings Releases and Quarterly Reports (Dec. 18, 2018), available at <https://www.sec.gov/news/press-release/2018-287> (quoting Chairman Jay Clayton, “Our markets thirst for high-quality, timely information regarding company performance and material corporate events. We recognize the importance of this information to well-functioning and fair capital markets. We also recognize the need for companies and investors to plan for the long term. Our rules should reflect these realities.”); Commissioner Robert J. Jackson Jr., Stock Buybacks and Corporate Cashouts (June 11, 2018), available at <https://www.sec.gov/news/speech/speech-jackson-061118> (“The increasingly rapid cycling of capital at American public companies has had real costs for American workers and families. We need our corporations to create the kind of long-term, sustainable value that leads to the stable jobs American families count on to build their futures.”)

⁸ Avi Steinlauf, *The Case for Staying Private (and Why IPOs Are Overrated)*, Inc., available at <https://www.inc.com/avi-steinlauf/why-we-are-staying-private.html> (arguing that public companies are subject to “short-term market players [that] have no vested long-term interest” in the company, while “private organizations can preserve their focus on what is truly best for the organization’s overall success”); Maureen Farrell, *America’s Roster of Public Companies Is Shrinking Before Our Eyes*, Wall Street Journal (January 6, 2017), available at <https://www.wsj.com/articles/americas-roster-of-public-companies-is-shrinking-before-our-eyes-1483545879> (citing University of Michigan Ross School of Business professor Jerry Davis, who believes that “[t]he dangers of being a public company are really evident,” among them, “having an investor base that clamors for short-term stock gains”); Jonathan Macey, *As IPOs Decline, the Market is Becoming More Elitist*, L.A. Times (January 10, 2017), available at <http://www.latimes.com/opinion/op-ed/la-oe-macey-ipo-democracy-20170110-story.html> (Op-Ed by professor Macey noting, among other things, that “[o]ne drawback to going

Indeed, even when companies do undertake initial public offerings, in recent years, many have sought to do so in a way that limits the public market's short-term pressures, by going public much later in their lifecycle¹⁰ or retaining for the founders much of the voting control.¹¹

In order to help combat these trends, the Exchange and its affiliates engaged in a multiyear effort to understand the principles that promote long-term value creation. LTSE's analysis found that certain investors are eager to have more relevant information about long-term policies and certain long-term focused companies wish to provide such information to investors to increase transparency and enable their focus to be understood and appreciated. As a result, the Exchange believes that the proposed rules will begin to introduce a differentiated choice for

public is shareholders' sometimes excessive focus on short-term stock price fluctuations").

⁹ See, e.g., John Kell, *Why Panera Bread Founder Ron Shaich Sold His Company*, *Fortune* (April 5, 2017) ("I spend about 20% of my time explaining what I do and what I'm about to do," he said. "I think being private, for Panera, doesn't give us anything other than it frees us up" and, on selling to a private investment firm, "They are thinking about centuries, not decades," he said. "They are very committed to long term decision making"; Michael Dell, *Going Private is Paying Off for Dell*, *Wall Street Journal* (November 24, 2014) ("As a private company, Dell now has the freedom to take a long-term view. No more pulling R&D and growth investments to make in-quarter numbers...No more trade-offs between what's best for a short-term return and what's best for the long-term success of our customers").

¹⁰ See, e.g., Jay R. Ritter, *Initial Public Offerings: Median Age of IPOs Through 2017* (June 13, 2018) available at <https://site.warrington.ufl.edu/ritter/files/2018/07/IPOs2017Age.pdf>; Gwynn Guilford, *US startups don't want to go public anymore. That's bad news for Americans* (February 1, 2018) available at <https://qz.com/1192972/us-startups-are-shunning-ipos-thats-bad-news-for-americans/>.

¹¹ See, e.g. Jay R. Ritter, *Initial Public Offerings: Dual Class IPOs* (December 31, 2018) available at <https://site.warrington.ufl.edu/ritter/files/2019/04/IPOs2018DualClass.pdf>; *Wall Street Journal Business Blog*, *The Big Number* (August 17, 2015), available at <https://www.wsj.com/articles/the-big-number-1439865699> .

issuers and investors that prefer listing standards explicitly designed to promote long-term focus and value creation.¹²

Long-Term Policies

The proposed rules are based on the belief that transparency of information relevant to long-term value creation will be valued by both investors and companies. As a result, the proposed rules would require LTSE-Listed Issuers to adopt and publish policies that are consistent with the following long-term principles (collectively, the “Principles”):

- Long-term focused companies should consider a broader group of stakeholders and the critical role they play in one another’s success;
- Long-term focused companies should measure success in years and decades and prioritize long-term decision-making;
- Long-term focused companies should align executive compensation and board compensation with long-term performance;
- Boards of directors of long-term focused companies should be engaged in and have explicit oversight of long-term strategy; and
- Long-term focused companies should engage with their long-term shareholders.

LTSE believes that the Principles help to identify what policies are most relevant to long-term value creation.

LTSE-Listed Issuers will have flexibility in developing what they believe to be appropriate policies for their businesses; however, each of the required policies must include

¹² The Exchange intends to separately propose additional changes to its listing requirements in the future that the Exchange believes will further incentivize companies and investors to adopt a long-term perspective. Any future changes are not a part of this filing, nor does the mention of such changes serve as notice to the SEC about any such future filings.

certain minimum elements, as described further below, and must be consistent with the Principles. The Exchange will enforce these provisions by ensuring that each LTSE-Listed Issuer has addressed all of the elements enumerated in each of the policies outlined below, consistent with the Principles, and made the policies publicly available without cost.

(A) Long-Term Stakeholder Policy

Proposed Rule 14.425(a)(1) would require that each LTSE-Listed Issuer adopt and publish a Long-Term Stakeholder policy explaining how the issuer operates its business to consider all of the stakeholders critical to its long-term success. At a minimum, this policy must include a discussion of (i) the stakeholder groups the LTSE-Listed Issuer considers critical to long-term success, (ii) the LTSE-Listed Issuer's impact on the environment and its community, (iii) the LTSE-Listed Issuer's approach to diversity and inclusion, (iv) the LTSE-Listed Issuer's approach to investing in its employees, and (v) the LTSE-Listed Issuer's approach to rewarding its employees and other stakeholders for contributing to the LTSE-Listed Issuer's long-term success.

The Exchange believes that companies committed to success over decades and generations recognize that they must invest in their employees, consider their impact on the communities in which they operate, and reward their employees and other stakeholders in order to achieve their goals. The Exchange also believes that effective long-term planning is enhanced when companies consider their impact on various stakeholders and the sustainability of their business, and that long-term investors generally value such information.

(B) Long-Term Strategy Policy

Proposed Rule 14.425(a)(2) would require that each LTSE-Listed Issuer adopt and publish a Long-Term Strategy Policy explaining how the LTSE-Listed Issuer prioritizes long-term strategic decision-making and long-term success. The Exchange believes that companies

should measure success by years, decades, and generations rather than quarter-by-quarter, and this approach should be integrated into strategic planning and decision-making throughout the organization. The Long-Term Strategy Policy must define the LTSE-Listed Issuer's long-term time horizon, and include a discussion of how this time horizon relates to the LTSE-Listed Issuer's strategic plans, how the LTSE-Listed Issuer aligns success metrics with that horizon, and how it implements long-term prioritization throughout the organization. The disclosure of this policy is designed to increase transparency for shareholders on the strategic goals of the company's managers and provide for greater alignment and accountability between a company's long-term vision and investor expectations. The Exchange believes that long-term investors value additional transparency enabling them to better understand how LTSE-Listed Issuers implement their commitment to long-term focus.

(C) Long-Term Compensation Policy

Proposed 14.425(a)(3) would require that each LTSE-Listed Issuer adopt and publish a policy explaining the LTSE-Listed Issuer's alignment of executive financial and non-financial compensation and of board compensation with the LTSE-Listed Issuer's long-term success and long-term success metrics. The Exchange believes that long-term focused companies seek to align the compensation of their executive officers with the long-term performance of the company. In addition, the Exchange believes that since the boards of such companies play an active role in long-term strategy, these companies seek to align the compensation of their boards to long-term performance as well. Investors should be able to understand the LTSE-Listed Issuer's approach to ensuring this alignment.

The Exchange recognizes that much of the information that would need to be disclosed under proposed Rule 14.425(a)(3) would already be disclosed by the issuer pursuant to Rule 402

of Regulation S-K¹³. However, the Exchange believes that requiring LTSE-Listed Issuers to publish a Long-Term Compensation Policy would still be helpful to long-term investors, as it would ensure that they have access to a policy that extracts and possibly expands upon the aspects of an LTSE-Listed Issuer's long-term compensation program from the CD&A that are most relevant to a long-term focus.

(D) Long-Term Board Policy

Proposed 14.425(a)(4) would require that each LTSE-Listed Issuer adopt and publish a policy explaining the engagement of the LTSE-Listed Issuer's board of directors in the LTSE-Listed Issuer's long-term focus, including discussion of whether the board and/or which board committee(s), if any, have explicit oversight of and responsibility for long-term strategy and success metrics. The Exchange believes the boards of directors should be engaged with the LTSE-Listed Issuer's forward-looking, long-term strategy, rather than serving primarily an audit function and looking backwards, as many boards seem to today. The Exchange also believes that investors will find this information useful.

(E) Long-Term Investor Policy

Proposed 14.425(a)(5) would require that each LTSE-Listed Issuer adopt and publish a policy explaining how the LTSE-Listed Issuer engages with long-term investors. The Exchange believes that forward-thinking companies value long-term investor input and consider their

¹³ This rule requires each SEC registrant to disclose in its annual proxy statement all material elements of the registrant's compensation, awarded to, earned by, or paid to named executive officers (the "CD&A"). The CD&A must describe, among other things, the objectives of the registrant's compensation program and what it is designed to reward. In addition, Rule 402(b)(2) of Regulation S-K provides that the CD&A may include "[t]he policies for allocating between long-term and currently paid out compensation" and "[f]or long-term compensation, the basis for allocating compensation to each different form of award (such as relationship of the award to the achievement of the registrant's long-term goals, management's exposure to downside equity performance risk, correlation between cost to registrant and expected benefits to the registrant)."

perspective on company governance as important to the development of the company's long-term strategy. In addition, based on the Exchange's conversations with long-term investors, the Exchange believes that such investors are better able to support a company's long-term approach when they have sufficient information about it and appropriate engagement with the company.

(F) Location of Disclosure

Proposed Rule 14.425(c) would require that each LTSE-Listed Issuer review the policies required by proposed Rule 14.425(a) at least annually and make such policies available publicly and free of charge on or through its website. In addition, each LTSE-Listed Issuer would be required to disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its annual report on Form 10-K (or if a foreign private issuer, Form 20-F) filed with the SEC, that these policies are available on or through its website and provide the website address. These requirements are intended to ensure that investors are aware of and have access to the policies required by the proposed rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general,¹⁴ and further the objectives of Section 6(b)(5) of the Act,¹⁵ 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.

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(5).

As discussed in detail in the Purpose section above, the Exchange believes that there is growing concern among market observers that pressures to meet short-term expectations have resulted in negative consequences for companies, investors and the economy as a whole. The Exchange believes that the proposed rules would remove impediments to a free and open market and protect investors and the public interest by providing the marketplace with a differentiated listing venue choice that seeks to encourage greater transparency and focus by companies and investors on long-term issues. Specifically, the proposed rules are intended to better enable companies to focus on long-term value creation, potentially enhancing opportunities for capital formation. The proposed rules are also intended to foster transparency, which would protect investors and the public interest, particularly those investors with a long-term focus.

The Exchange will enforce these provisions by ensuring that each LTSE-Listed Issuer has addressed all of the elements enumerated in each of the policies, consistent with the Principles, thereby preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change will enhance competition between exchange listing markets in furtherance of Section 11A(a)(1)(C)(ii) of the Act¹⁶ and consistent with Section 6(b)(8) of the Act¹⁷ because it will provide issuers with a differentiated offering as compared to the other listing rules existing on other national securities exchanges. Moreover, as a new listing venue, the Exchange expects to face intense competition from existing exchanges.

¹⁶ 15 U.S.C. 78k-1(a)(1)(C)(ii).

¹⁷ 15 U.S.C. 78f(b)(8).

Consequently, the degree to which the proposed listing standards could impose any burden on intermarket competition is extremely limited because other national securities exchanges may propose similar listing standards and issuers are able to list on other national securities exchanges. The Exchange does not believe that such requirements would impose any burden on competing venues that is not necessary or appropriate in furtherance of the purposes of the Act. Further, issuers that do not wish to meet the Exchange's listing standards are able to list on other national securities exchanges, and their securities may still trade on the Exchange through unlisted trading privileges.¹⁸ Conversely, other national securities exchanges that do not maintain similar listing rules would still be able to compete with the Exchange to execute transactions in securities listed on the Exchange, which would trade on such other national securities exchanges through unlisted trading privileges.

To the extent the Exchange is successful in attracting issuers to the list on the Exchange, other exchanges or potential new entrants could respond by adopting their own rules that are designed to foster long-term value creation.

The Exchange also does not believe that the proposal will impose any burden on competition between LTSE-Listed Issuers that is not necessary or appropriate in furtherance of the purposes of the Act because all companies electing to list on the Exchange will be subject to the same standards, and subject to the same surveillance and enforcement of these standards. To the extent that LTSE-Listed Issuers choose to compete by providing more complete or effective descriptions and policies in response to this filing, this will provide further transparency and information to the market and investors.

¹⁸ 15 U.S.C. 78l(f); 17 CFR 240.12f-2.

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 up to 90 days (i) as the Commission may designate 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 will:

- (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-2019-049 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-2019-01. 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-2019-01 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.¹⁹

July 8, 2019

Eduardo Aleman
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).

[FR Doc. 2019-14813 Filed: 7/11/2019 8:45 am; Publication Date: 7/12/2019]