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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91287; File No. SR-LTSE-2021-01]

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

March 10, 2021

I. Introduction

On January 19, 2021, Long-Term Stock Exchange, Inc. (“LTSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 14.501(d)(2)(A)(iii) to specify the process for enforcing compliance with LTSE Rule 14.425, which requires each listed company of the Exchange to adopt and publish “Long-Term Policies” as set forth in the rule. The proposed rule change was published for comment in the Federal Register on February 4, 2021.³ No comment letters were received in response to the Notice. This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91019 (January 29, 2021), 86 FR 8243 (February 4, 2021) (“Notice”).

II. Description of the Proposed Rule Change

The Exchange proposes to amend Rule 14.501(d)(2)(A)(iii) to specify the process under LTSE Rule Series 14.500 for enforcing compliance with LTSE Rule 14.425, which requires listed Companies⁴ to adopt and publish Long-Term Policies consistent with a defined set of principles (the “Principles”) articulated in LTSE Rule 14.425(b).⁵ As the Exchange states, 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”).⁶ LTSE Rule 14.425(b) establishes that Companies have flexibility in developing what they believe to be appropriate policies for their businesses on condition that each of the Policies must be consistent with the Principles.⁷ Under LTSE Rule 14.425(c), Companies also are required to review their Policies at least annually, make them publicly available free of charge on or through their websites, and

⁴ “Company” means the issuer of a security listed or applying to list on the Exchange. For purposes of Chapter 14 of the LTSE Rules, the term “Company” includes an issuer that is not incorporated, such as, for example, a limited partnership. See LTSE Rule 14.002(a)(5).

⁵ See Notice, supra note 3, at 8244. LTSE Rule Series 14.500 sets forth the procedures of the Exchange relating to a Company’s failure to meet the listing standards in Chapter 14 of the Exchange’s rules, which comprises the corporate governance standards set forth in Rule Series 14.400, including Rule 14.425 regarding Long-Term Policies.

⁶ See id. See also Securities Exchange Act Release No. 86722 (August 21, 2019), 84 FR 44952 (August 27, 2019) (SR-LTSE-2019-01) (“Long-Term Policies Approval Order”) (Order Approving Proposed Rule Change To Adopt Rule 14.425, Which Would Require Companies Listed on the Exchange To Develop and Publish Certain Long-Term Policies).

⁷ See Notice, supra note 3, at 8244.

provide related disclosures in certain filings with the Commission.⁸ In addition, 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, consistent with the Principles, and that each Company has made the Policies publicly available without cost.⁹

Currently, LTSE states that it enforces the provisions of LTSE Rule 14.425 through a number of rules in the LTSE Rulebook.¹⁰ The Exchange notes that, under LTSE Rule 14.101, the Exchange may at all times exercise its broad discretionary authority 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.¹¹ Under LTSE Rule 14.500(a), LTSE staff is responsible for identifying deficiencies that may lead to delisting.¹² Under LTSE Rule 14.410, a Company is required to 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 14.425.¹³ Under LTSE Rule 14.207(a)(1), the Exchange may request any additional information or documentation, public or non-public, deemed necessary to make a determination

⁸ See id.

⁹ See id. See also Long-Term Policies Approval Order, supra note 6, at 44954.

¹⁰ See Notice, supra note 3, at 8244.

¹¹ See id. at 8245.

¹² See id. at 8244.

¹³ See id.

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.¹⁴ In addition, the Exchange states that it plans to monitor Company compliance with Rule 14.425 annually and on an ad hoc basis.¹⁵

Finally, 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.¹⁶ The Exchange states that 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 ("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.¹⁷ LTSE Rule 14.501(d) identifies the deficiencies that fall within each of these four categories,¹⁸ and provides that in the case of a deficiency not specified in LTSE Rule 14.501(d)(1)-(4), LTSE staff will issue either a Staff Delisting Determination or a Public Reprimand Letter.¹⁹

¹⁴ See id.

¹⁵ See id. at 8244 n.6.

¹⁶ See id. at 8244.

¹⁷ See id.

¹⁸ See id.

¹⁹ See id. at 8244 n.7.

The Exchange proposes to amend LTSE Rule 14.501(d)(2)(A)(iii) to specify that deficiencies relating to LTSE Rule 14.425 would be included among those for which a Company may submit a Plan of Compliance for staff review.²⁰ The Exchange states that this would be similar to how other corporate governance rules are handled generally in LTSE Rule 14.501(d)(2)(A)(iii).²¹

Under LTSE Rule 14.501(d)(2)(C), a Company has 45 calendar days to submit a plan to regain compliance.²² According to the Exchange, LTSE staff may extend this deadline for up to an additional five 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.²³ The Exchange asserts 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.²⁴

²⁰ See id. at 8244. The proposed rule change would also remove two erroneous “or”s in LTSE Rule 14.501(d)(2)(A)(iii). See id. at 8244 n.8.

²¹ See id. (citing 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), and 14.414 (Internal Audit Function)).

²² See id. at 8244.

²³ See id.

²⁴ See id. The Exchange also states that, 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 [Commission] 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

According to the Exchange, the process for reviewing such a Plan of Compliance is set forth in LTSE Rule 14.501(d)(2)(B) and would be unchanged by this proposal.²⁵ Under that provision, the Exchange may provide the Company with up to 180 days to regain compliance (with certain exceptions), issue a Staff Delisting Determination letter, or issue a Public Reprimand Letter in accordance with LTSE Rule 14.501(d)(4).²⁶ Under 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 the procedures and timelines set forth in LTSE Rules 14.502, 14.504, and 14.505.²⁷

The Exchange asserts that providing an opportunity for remediation to Companies that face a deficiency with respect to LTSE Rule 14.425 will allow Companies to formulate effective Policies tailored to Company-specific needs.²⁸ The Exchange argues that 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.²⁹ To that end, the Exchange maintains that, in case of a deficiency, Companies

its determination that the Company does not meet the listing standard.” For avoidance of doubt, the Exchange further states that 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). See id. at 8244 n.9.

²⁵ See id. at 8244.

²⁶ See id.

²⁷ See id.

²⁸ See id. at 8245.

²⁹ See id.

will be able to achieve compliance by changing Policies or practices related to the deficiency, amending the applicable Policies, or some combination of both, provided that the changes are consistent with the Principles.³⁰

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.³¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,³² which requires, among other things, that rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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, and that those rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the proposed rule change will bring the Exchange's handling of deficiencies in a Company's compliance with LTSE Rule 14.425 into alignment with its handling of deficiencies in a Company's compliance with other LTSE Rules pertaining to corporate governance,³³ as detailed in the adjudicatory process set

³⁰ See id. For the avoidance of doubt, the Exchange states that 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. See id. at 8245 n.11.

³¹ 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³² 15 U.S.C. 78f(b)(5).

³³ See supra note 21 and accompanying text.

forth in LTSE Rule Series 14.500. The Commission further notes that any Company listed on LTSE would already have had to adopt and publish Long-Term Policies prior to being accepted for listing. The Commission therefore believes it is reasonable to afford a Company the opportunity to submit a Plan of Compliance should a deficiency subsequently arise in this area. The Commission notes in this regard that, in addition to submitting a Plan of Compliance, a listed Company that receives a deficiency notification from the Exchange is required to make a public announcement that discloses its receipt of the notification and the basis for it, and that such announcement must be made as promptly as possible but not more than four business days following receipt of the notification.³⁴ Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁵ that the proposed rule change (SR-LTSE-2021-01), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

J. Matthew DeLesDernier,

Assistant Secretary.

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³⁴ See LTSE Rule 14.501(c); supra note 24.

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ 17 CFR 200.30-3(a)(12).