

*Required fields are shown with yellow backgrounds and asterisks.*

Filing by Investors' Exchange LLC  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b>	<b>Amendment *</b>	<b>Withdrawal</b>	<b>Section 19(b)(2) *</b>	<b>Section 19(b)(3)(A) *</b>	<b>Section 19(b)(3)(B) *</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
<b>Pilot</b>	<b>Extension of Time Period for Commission Action *</b>	<b>Date Expires *</b>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

<b>Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010</b>	<b>Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934</b>
<b>Section 806(e)(1) *</b>	<b>Section 806(e)(2) *</b>
<input type="checkbox"/>	<input type="checkbox"/>
	<b>Section 3C(b)(2) *</b>
	<input type="checkbox"/>

<b>Exhibit 2 Sent As Paper Document</b>	<b>Exhibit 3 Sent As Paper Document</b>
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed rule change to establish a new optional listing category on the Exchange, LTSE Listings on IEX, which provides a differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*  Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*  Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date    
 By    
 (Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Investors Exchange LLC (“IEX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to establish a new optional listing category on the Exchange, which provides a differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. Examples demonstrating how shareholder approval calculations would be conducted under proposed Rule 14A.412, as compared to alternative approaches considered, are attached hereto as Exhibit 3. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Claudia Crowley  
Chief Regulatory Officer  
Investors Exchange LLC  
646-343-2041

Sophia Lee  
General Counsel  
Investors Exchange LLC  
646-343-2040

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

a. Purpose

(1) Overview

On June 17, 2016, the Commission granted the Exchange’s application for registration as a national securities exchange under Section 6 of the Act,<sup>3</sup> including approval of rules applicable to the qualification, listing and delisting of companies on the Exchange. The Exchange has since adopted additional rules to create a listing venue to provide a new alternative for companies seeking to list their securities for trading on a registered national securities exchange.<sup>4</sup>

The Exchange is proposing to adopt rules to facilitate the creation of a new optional listing category on the Exchange for common equity securities, referred to as the “LTSE Listings on IEX” or “LTSE Listings.” The proposed rules for LTSE Listings, to be contained in new Chapter 14A of the Exchange’s rules (the “LTSE Listings Rules”),

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<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> See, e.g., Securities Exchange Act Release No. 80453 (April 13, 2017), 82 FR 18507 (April 19, 2017); Securities Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017); Securities Exchange Act Release No. 80905 (June 12, 2017), 82 FR 27748 (June 16, 2017).

were initially developed by LTSE Holdings, Inc. (together with its affiliates, “LTSE”), and provide a differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation. The Exchange understands that LTSE anticipates separately registering a subsidiary as a national securities exchange in the future, but has entered into an arrangement with the Exchange in order to make the LTSE Listings Rules available to potential interested companies in advance of its own subsidiary’s registration as a national securities exchange.

Becoming subject to the LTSE Listings Rules would be an optional election. Companies listed on the Exchange that do not elect to be subject to the LTSE Listings Rules would not be required to comply with Chapter 14A. However, companies that list on LTSE Listings (“LTSE Listings Issuers”) would be subject to the LTSE Listings Rules, as well as the quantitative listing requirements set forth in IEX Rule Series 14.300, and all other applicable listing rules of the Exchange set forth in Chapter 14 of the IEX Rulebook, except as they may be specifically modified for LTSE Listings Issuers.

At this time, the Exchange is limiting the availability of LTSE Listings to companies seeking to list on LTSE Listings concurrently with their initial public offering (whether listing on LTSE Listings only or dually listing on LTSE Listings and another national securities exchange). The Exchange would not permit issuers already listed on another national securities exchange to transfer to LTSE Listings.

The Exchange believes that the new LTSE Listings category will introduce a differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation, potentially enhancing opportunities for capital formation, as well as contributing to greater competition for listings among

national securities exchanges. At the same time, as LTSE Listings will be an entirely optional listing category, the introduction of LTSE Listings will not impact companies that elect to list on the Exchange under its existing listing rules.

(2) Background

(A) Concerns about Short-Termism in the Markets

Many academics, commentators, market participants,<sup>5</sup> as well as certain current

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<sup>5</sup> 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%20capitalism/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](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.”); Travis

and former members of the Commission<sup>6</sup> have voiced concerns regarding so-called “short-termism” and the risk that some investors’ 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.

Commenters have pointed to the dramatically declining average amount of time

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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) [http://www.loudountimes.com/news/article/a\\_loudoun\\_times\\_mirror\\_conversation\\_with\\_sen.\\_mark\\_warner432](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.”).

<sup>6</sup> See, e.g., Jay Clayton, Hearing before the Senate Banking Committee on the Nomination of Jay Clayton, of New York, to be a Member of the Securities and Exchange Commission (March 23, 2017), [available at](https://www.gpo.gov/fdsys/pkg/CHRG-115shrg24998/html/CHRG-115shrg24998.htm) <https://www.gpo.gov/fdsys/pkg/CHRG-115shrg24998/html/CHRG-115shrg24998.htm> (“In my experience, certain companies view the operational and other pressures inherent in quarterly earnings as costly, including because they detract from long-term planning and strategic initiatives”); Commissioner Daniel M. Gallagher, Activism, Short-Termism, and the SEC: Remarks at the 21st Annual Stanford Directors’ College (June 23, 2015), [available at](https://www.sec.gov/news/speech/activism-short-termism-and-the-sec.html) <https://www.sec.gov/news/speech/activism-short-termism-and-the-sec.html> (“[T]here seems to be a predominance of short-term thinking at the expense of long-term investing. Some activists are swooping in, making a lot of noise, and demanding one of a number of ways to drive a short-term pop in value: spinning off a profitable division, beginning a share buy-back program, or slashing capital expenditures or research and development expenses.”); Commissioner Kara M. Stein, Toward Healthy Companies and a Stronger Economy: Remarks to the U.S. Treasury Department’s Corporate Women in Finance Symposium (April 30, 2015), [available at](https://www.sec.gov/news/speech/stein-toward-healthy-companies.html) <https://www.sec.gov/news/speech/stein-toward-healthy-companies.html> (“The heart of the argument is that short-term pressures from certain investors, and markets in general, compel companies to look narrowly at the short-term. As a result, companies become overly focused on meeting quarterly earnings targets... To meet these demands, companies have to cut back on capital expenditures, research and development, workforce training, and other investments that lead to new innovation, higher productivity, and future growth.”).

that an investor holds a stock as evidence of a greater short-term focus.<sup>7</sup> Share turnover data suggests that investors held stocks for an average of about eight years in 1960, compared with about eight months in 2015.<sup>8</sup> While a great deal of this turnover may be attributable to the growth of high-frequency trading strategies (which accounted for about 50% of all U.S. trade volume in 2016),<sup>9</sup> more traditional institutional investors have shown reduced holding periods as well. A 2013 survey showed that 96% of institutional investors executed round-trip trades that lasted less than one month, with 23% of their trading volume relating to trades that are held for less than three months.<sup>10</sup>

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<sup>7</sup> See, e.g., Dominic Barton, Capitalism for the Long Term, Harvard Business Review (March 2011), available at <https://hbr.org/2011/03/capitalism-for-the-long-term>; Tragedy of the Horizon Project, The Long and Winding Road: How Long-Only Equity Managers Turn Over Their Portfolios Every 1.7 Years (February 2017), available at <http://www.tragedyofthehorizon.com/The-Long-And-Winding-Road.pdf>; Martin Cremers, Ankur Pareek and Zacharias Sautner, Short-Term Investors, Long-Term Investments, and Firm Value (March 14, 2017), available at <https://ssrn.com/abstract=2720248>; Alana Semuels, How to Stop Short-Term Thinking at America's Companies, The Atlantic (December 30, 2016), available at <https://www.theatlantic.com/business/archive/2016/12/short-term-thinking/511874>; Roger L. Martin, Yes, Short-Termism Really is a Problem, Harvard Business Review (October 9, 2015), available at <https://hbr.org/2015/10/yes-short-termism-really-is-a-problem>.

<sup>8</sup> New York Stock Exchange, Annual Reported Volume, Turnover Rate, Reported Trades (2004), available at [http://www.nyxdata.com/nysedata/asp/factbook/viewer\\_edition.asp?mode=table&key=2206&category=4](http://www.nyxdata.com/nysedata/asp/factbook/viewer_edition.asp?mode=table&key=2206&category=4); World Bank, Stocks Traded, Turnover Ratio of Domestic Shares (2015), available at <https://data.worldbank.org/indicator/CM.MKT.TRNR?end=2015&locations=US&start=1975> (hereinafter "Turnover Ratio of Domestic Shares").

<sup>9</sup> Ana Avramovic, Credit Suisse Market Commentary: We're All High-Frequency Traders Now (March 15, 2017), available at <https://edge.credit-suisse.com/edge/Public/Bulletin/Servefile.aspx?FileID=28410&m=-1290757752>.

<sup>10</sup> Bidisha Chakrabarty, Pamela C. Moulton and Charles Trzcinka, Institutional Holding Periods (April 29, 2013), available at

Some commenters believe that current public market dynamics subject public companies to intense pressure to meet quarterly performance targets, resulting in negative consequences for long-term value creation.<sup>11</sup> One study found that 80% of chief financial officers of public companies acknowledge that they would forego long-term value creation initiatives like research and development in order to avoid missing quarterly targets.<sup>12</sup> Further, a 2013 study found that companies projected to just miss their earnings per share (“EPS”) forecasts by a few cents are significantly more likely to repurchase shares than companies that beat their EPS forecasts by a few cents, suggesting efforts to increase EPS through financial engineering rather than growth.<sup>13</sup> At the same time, this study found that in the calendar year following repurchases, these same companies

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<https://scholarship.sha.cornell.edu/cgi/viewcontent.cgi?article=1001&context=conf>.

- <sup>11</sup> McKinsey Global Institute, Measuring the Economic Impact of Short-Termism (February 2017), available at <http://www.mckinsey.com/~media/mckinsey/global%20themes/long%20term%20capitalism/where%20companies%20with%20a%20long%20term%20view%20outperform%20their%20peers/measuring-the-economic-impact-of-short-termism.ashx>. C.f. James B. Stewart, Amazon Says Long Term And Means It, N.Y. Times (December 16, 2011) (noting Amazon.com’s willingness to invest in long-term initiatives notwithstanding the impact on its short-term quarterly earnings).
- <sup>12</sup> John R. Graham, Campbell R. Harvey, Shiva Rajgopal, Value Destruction and Financial Reporting Decisions (September 6, 2006), available at [https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/12924/Rajgopal\\_value.pdf](https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/12924/Rajgopal_value.pdf) (“80% of survey participants report that they would decrease discretionary spending on R&D, advertising and maintenance to meet an earnings target”).
- <sup>13</sup> Heitor Almeida, Vyacheslav Fos, Mathias Kronlund, The Real Effects of Share Repurchases (June 8, 2015), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2276156](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2276156).

decreased their number of employees, investment in research and development, and capital expenditures, which the study authors found suggests that these companies may have been willing to forego investment in long-term growth in order to meet short-term financial targets.<sup>14</sup>

The greater focus on short-term financial performance noted by these commenters also coincides with a reduction in the number of private companies seeking to undertake initial public offerings (“IPOs”) and list their shares on the U.S. public markets. From 2001 through 2016, the U.S. averaged approximately one-third of the IPOs per year than it did each year between 1998 and 2000.<sup>15</sup> Calendar year 2016 had the fewest number of IPOs since the financial crisis years of 2008 and 2009,<sup>16</sup> although there was a relative increase in 2017.<sup>17</sup> The total number of listed companies in the United States also fell by almost 50% in the twenty year period from 1996 through 2016, down from over 8,000 companies listed on U.S. exchanges in 1996 to 4,333 in June of 2016.<sup>18</sup>

This decline is driven by fewer companies going public, existing public

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<sup>14</sup> Id.

<sup>15</sup> Jay R. Ritter, Initial Public Offerings: Updated Statistics (August 8, 2017), available at <https://site.warrington.ufl.edu/ritter/files/2017/08/IPOs2016Statistics.pdf>.

<sup>16</sup> Id.

<sup>17</sup> Ernst & Young, Global IPO Trends: Q3 2017 (2017), available at [http://www.ey.com/Publication/vwLUAssets/ey-global-ipo-trends-q3-2017/\\$FILE/ey-global-ipo-trends-q3-2017.pdf](http://www.ey.com/Publication/vwLUAssets/ey-global-ipo-trends-q3-2017/$FILE/ey-global-ipo-trends-q3-2017.pdf) (noting 111 IPOs in the U.S. through the third quarter of 2017, a 35% increase year-over-year).

<sup>18</sup> See U.S. Dept. of the Treasury, A Financial System that Creates Economic Opportunities: Capital Markets at p. 21 (October 2017), available at <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>

companies going private or merging with other public companies, and those companies that undertake an IPO doing so at a much later stage. Between 1980 and 2000, companies that went public typically did so about 7.6 years after founding.<sup>19</sup> Since then, that timespan has grown longer; between 2001 and 2016, the average age of a company at its IPO was nearly 12 years.<sup>20</sup>

The Exchange believes that these trends have significant consequences for companies, investors, and the economy as a whole. A 2011 report by the IPO Task Force reported that “up to 22 million jobs may have been lost” as a result of the decline in IPOs.<sup>21</sup> The trend toward companies staying private also limits the investment opportunities for ordinary investors,<sup>22</sup> as most retail investors are not “accredited investors” eligible to invest in private placements pursuant to Rule 506 of Regulation D<sup>23</sup> under the Securities Act of 1933.<sup>24</sup> Although institutional investors may provide the investment capital that these companies need, some have voiced concerns that private

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<sup>19</sup> Ritter, supra note 15.

<sup>20</sup> Id.

<sup>21</sup> IPO Task Force, Rebuilding the IPO On-Ramp (October 20, 2011), available at [https://www.sec.gov/info/smallbus/acsec/rebuilding\\_the\\_ipo\\_on-ramp.pdf](https://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf).

<sup>22</sup> See U.S. Dept. of the Treasury, A Financial System that Creates Economic Opportunities: Capital Markets at p. 27 (October 2017), available at <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf> (“If a company decides not to go public and instead raises capital in the private market or as an exempt offering, it could be subject to investor qualification requirements and/or offering limitations. This could result in the average investor being deprived of an opportunity to consider investing in that enterprise.”).

<sup>23</sup> 17 CFR 230.506.

<sup>24</sup> 15 U.S.C. 77a et seq.

markets lack the transparency, liquidity, price discovery, and protections of the public marketplace.<sup>25</sup>

Although there are a number of potential causes for the decline in the number of IPOs and the number of public companies,<sup>26</sup> some commenters believe that the short-term pressures placed on public companies have discouraged some newer companies from conducting initial public offerings,<sup>27</sup> and have led others to go private.<sup>28</sup> Indeed,

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<sup>25</sup> Commissioner Kara M. Stein, *Lighting our Capital Markets* (July 11, 2017), available at <https://www.sec.gov/news/speech/stein-lighting-our-capital-markets-071117>.

<sup>26</sup> Jay R. Ritter, Xiaohui Gao Bakshi, Zhu, Zhongyan, *Where Have All the IPOs Gone?* (August 26, 2013), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1954788](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1954788) (hypothesizing that economies of scope make it more attractive for companies to sell themselves to a larger organization than remain independent); Elisabeth de Fontenay, *The Deregulation of Private Capital and the Decline of the Public Company*, Duke Law School Public Law & Legal Theory Series No. 2017-33 (April 11, 2017), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2951158](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2951158) (suggesting that the easing of regulation on private securities offerings and transactions have decreased the incentive for firms to become public); PwC, *Considering an IPO? The costs of going and being public may surprise you* (September 2012), available at <http://www.pwc.com/us/en/deals/publications/assets/pwc-cost-of-ipo.pdf> (discussing cost of initial IPO and remaining public); Michael J. Mauboussin, *The Incredible Shrinking Universe of Stocks*, Credit Suisse Global Financial Strategies (March 22, 2017), available at [https://research-doc.credit-suisse.com/docView?language=ENG&format=PDF&sourceid=em&document\\_id=1072753661&serialid=h%2B%2FwLdU%2FTIaitAx1rnamfYsPRAuTFRGdTSF4HZIVtkA%3D](https://research-doc.credit-suisse.com/docView?language=ENG&format=PDF&sourceid=em&document_id=1072753661&serialid=h%2B%2FwLdU%2FTIaitAx1rnamfYsPRAuTFRGdTSF4HZIVtkA%3D) (suggesting causes including regulatory compliance costs, increased merger and acquisition activity, and availability of late-stage venture capital).

<sup>27</sup> 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

even when newer companies do undertake an IPO, in recent years many have sought to do so in a way that limits the public market's short-term pressures, by retaining for the founders much of the voting control.<sup>29</sup>

(B) Listing Standards for Long-Term Focused Companies and Investors

The Exchange believes that companies should be able to maintain a public listing on an exchange that provides a differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation. While all companies that may list on the Exchange can focus on long-term value creation, providing a listing category with listing rules that address some of the concerns regarding

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

<sup>28</sup> See, e.g., 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").

<sup>29</sup> Wall Street Journal Business Blog, *The Big Number* (August 17, 2015), available at <https://www.wsj.com/articles/the-big-number-1439865699>; Ken Bertsch, *Snap and the Rise of No-Vote Common Shares*, Harvard Law School Forum on Corporate Governance and Financial Regulation (May 26, 2017), available at <https://corpgov.law.harvard.edu/2017/05/26/snap-and-the-rise-of-no-vote-common-shares>.

short-termism could encourage greater participation in the public markets by long-term focused companies and investors, potentially increasing the number of companies willing to become public.

The Exchange understands that LTSE engaged in a multiyear effort to develop the LTSE Listings Rules based on its analysis of academic research, market experience, and input from a wide variety of long-term focused stakeholders. The LTSE Listings Rules are designed to promote the interests of companies that seek to focus on long-term value creation as well as the transparency and governance concerns of long-term focused investors. LTSE's analysis found that, although individual stakeholders may favor or disfavor particular LTSE Listings Rules, long-term focused companies and investors' concerns with particular LTSE Listings Rules were offset by the benefits they saw from the package of the LTSE Listings Rules as a whole.

The Exchange acknowledges that many, if not all, of the proposed requirements contained in the LTSE Listings Rules could be undertaken voluntarily by any company even in the absence of the LTSE Listings category. However, the Exchange understands that many long-term focused investors indicated to LTSE that they would view a company that affirmatively chose to list on an exchange (or listing category thereof) that required compliance with these rules, therefore subjecting itself to compliance as a regulatory condition to continued listing, as demonstrating a greater commitment to long-term focus than one that voluntarily undertook to abide by similar practices, but could readily choose to change its practices thereafter. In addition, because an exchange, as a

self-regulatory organization, is required to monitor and enforce compliance with its rules,<sup>30</sup> the Exchange believes that long-term focused investors appreciate and have confidence in the oversight that a national securities exchange provides to ensure that a company complies with its exchange listing obligations. Similarly, the Exchange understands that many long-term focused companies believe that they would be better able to withstand short-term pressures if they were subject to rules that explicitly required them to disclose actions promoting a long-term focus. Further, rather than each company acting independently, requiring investors to analyze each company's governance separately, investors familiar with LTSE Listings would quickly know the rules that apply to an LTSE Listings Issuer.

The Exchange has entered into an arrangement with LTSE to authorize the Exchange to make the LTSE Listings Rules available as a listing category of the Exchange. Through extensive discussions, LTSE has provided the Exchange with background information on the purpose of each of the LTSE Listings Rules, with which the Exchange agrees. As a result, statements herein that describe the Exchange's belief are informed by information provided by LTSE. Although the LTSE Listings Rules were developed by LTSE, the Exchange will retain full self-regulatory responsibility for determining initial and continuing compliance with the Exchange's listing standards, including for those companies that elect to be subject to the LTSE Listings Rules. In conducting its LTSE Listings business, IEX will retain, as its agents, a small number of staff that also are employed by LTSE (the "LTSE Listings Agents"), but will not receive

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<sup>30</sup> See 15 U.S.C. 78s(g)(1)(A).

regulatory services from LTSE itself. The sole responsibility of LTSE Listings Agents will be to provide IEX with expertise in interpreting the LTSE Listings Rules and assistance in conducting the LTSE Listings business, and their involvement will not extend to other matters within the Exchange's jurisdiction. The LTSE Listings Agents will be subject to the Exchange's oversight and regulatory authority as the responsible self-regulatory organization.<sup>31</sup>

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<sup>31</sup> Notwithstanding the services provided by the LTSE Listings Agents to the Exchange, all actions taken by the Exchange will ultimately be based on the Exchange's determination that the action is appropriate and consistent with the Act, the Commission's rules thereunder and the Exchange's rules. Pursuant to the Exchange's retention of LTSE Listings Agents, the LTSE Listings Agents will provide certain advisory, marketing, public communications, and sales services to IEX in connection with LTSE Listings. For example, LTSE Listings Agents will evaluate issuers seeking to list on the Exchange under the LTSE Listings Rules and will assist in monitoring LTSE Listings Issuers for compliance with the LTSE Listing Rules. The Exchange expects that the LTSE Chief Regulatory Officer will be a LTSE Listings Agent (and other LTSE regulatory personnel that do not have direct involvement in LTSE's commercial operations may also be retained by the Exchange to serve as LTSE Listings Agents). At all times, LTSE Listings Agents will be subject to the satisfaction and the oversight of the Exchange's Chief Regulatory Officer, with all actions proposed by LTSE Listings Agents subject to the Exchange's regulatory authority. Separately, the Exchange will permit LTSE to use and redistribute written marketing, public communications, and sales materials concerning the LTSE Listings business, subject to the Exchange's consent (not to be unreasonably withheld).

Further, the Exchange's arrangement with LTSE Listings Agents is subject to important restrictions designed to protect the Exchange's responsibilities as a self-regulatory organization and the confidentiality of its books and records pertaining thereto. First, each LTSE Listings Agent is considered to be an agent of the Exchange in connection with performance of services under the Exchange's arrangement with LTSE, pursuant to Article XI, Section 4 of the Amended and Restated Operating Agreement of Investors' Exchange LLC. Thus, as appropriate, information pertaining to the self-regulatory function of the Exchange may be made available to a LTSE Listings Agent to the extent

(3) Proposed LTSE Listings Rules

The proposed LTSE Listings Rules that would apply to LTSE Listings Issuers fall into five general categories: (i) board of directors and committee requirements, (ii) rules requiring supplemental long-term disclosures, (iii) rules requiring long-term alignment of executive compensation, (iv) rules requiring long-term shareholder voting structure, and (v) certain other rules that further encourage LTSE Listings Issuers to focus on long-term value creation. In addition, the Exchange is proposing rules that would clarify the application of certain existing Exchange rules to LTSE Listings Issuers.

(A) Board of Directors and Committee Requirements

The proposed LTSE Listings Rules would create new requirements for the boards

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necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange. However, pursuant to the Exchange's arrangement with LTSE, the Exchange will not share confidential regulatory information with LTSE (other than with LTSE regulatory personnel that are LTSE Listings Agents and that do not have direct involvement in LTSE's commercial operations).

Additionally, LTSE has agreed that each LTSE Listings Agent will be required to consent in writing to the application to them of the following provisions, which are consistent with Article VII of the Bylaws of IEX Group, Inc.: non-interference with, and due regard for, the Exchange's self-regulatory function; confidentiality of the Exchange's books and records pertaining to its self-regulatory function; maintenance of books and records related to services under the Exchange's arrangement with LTSE and services provided to the Exchange by LTSE Listings Agents at a location within the United States; compliance with the federal securities laws and the rules and regulations promulgated thereunder and cooperation with the SEC in respect of the SEC's oversight responsibilities regarding the Exchange and the self-regulatory functions and responsibilities of the Exchange; and consent to jurisdiction of the United States federal courts, the SEC and the Exchange for purposes of any suit, action or proceeding arising out of or relating to services provided to the Exchange and the Exchange's arrangement with LTSE.

of directors and board committees of LTSE Listings Issuers designed to align the board with the objectives of the LTSE Listings Rules. Specifically, the LTSE Listings Rules would require each LTSE Listings Issuer to establish a board committee dedicated to overseeing the issuer's strategies for creating and sustaining long-term growth and a committee dedicated to selecting or recommending qualified director nominees. The LTSE Listings Rules would also impose additional obligations on audit committees and compensation committees designed to increase oversight and transparency, among other things. These corporate governance requirements are discussed further below.

(i) Long-Term Strategy and Product Committee

Proposed Rule 14A.405(c)(1) would require that each LTSE Listings Issuer's board of directors maintain a committee specifically dedicated to overseeing the LTSE Listings Issuer's strategic plans for long-term growth (the "LTSP Committee"). Proposed Rule 14A.405(c)(3) would require that an LTSE Listings Issuer adopt a formal written LTSP Committee charter (and that the LTSP Committee will review and reassess the adequacy of the charter on an annual basis) specifying, among other things, the scope of the LTSP Committee's responsibilities, and how it will carry out those responsibilities, including structure, processes and membership requirements, and that the LTSP Committee must report regularly to the board of directors. The requirement to report regularly is intended to ensure that the board of directors has insight into the LTSP Committee's work and input into the LTSE Listings Issuer's strategic objectives.

Although LTSE Listings Issuers would have some flexibility in designing their LTSP Committee, in order to ensure that adequate board focus is placed on long-term strategy, proposed Rule 14A.405(c)(4) would require that the LTSP Committee include a

minimum of three members of the board and that a majority of the LTSP Committee members be independent. This majority independence requirement is intended to mitigate potential conflicts of interest and ensure that outside perspectives are brought into discussions and decisions regarding the company's long-term strategy.

Proposed Rule 14A.405(c)(3)(C) would require that the LTSP Committee's charter be made available on or through the LTSE Listings Issuer's website. The Exchange believes that increased transparency about the LTSP Committee's functions and policies is in the best interest of investors, and companies that hold themselves to a set of long-term standards should make such information available. The Exchange notes that Item 407 of Regulation S-K<sup>32</sup> requires that a public company's audit, nominating and compensation committee charters be either available to security holders on the company's website or as an appendix to its proxy or information statement provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the company's last fiscal year. The Exchange understands that many long-term focused investors expect to be able to readily access corporate governance information, such as board committee charters, on a company's website rather than by searching through a company's SEC filings, and accordingly the Exchange believes that it is appropriate to explicitly impose this requirement.

Proposed Rule 14A.405(c)(2) would provide LTSE Listings Issuers with additional flexibility by permitting the board of directors to allocate the LTSP Committee's responsibilities to committees of their own denomination, provided that the

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<sup>32</sup> 17 CFR 229.407.

committee (i) is subject to a formal written charter that satisfies the requirements of proposed Rule 14A.405(c)(3), including that such committee report regularly to the board of directors, and (ii) complies with the committee composition requirements set forth in proposed Rule 14A.405(c)(4). However, proposed Rule 14A.405(c)(1) would prohibit the LTSP Committee from assuming any roles or responsibilities that are required to be undertaken by an LTSE Listings Issuer's independent board committees, since the LTSP Committee is not required to be composed of all independent directors.

(ii) Nominating/Corporate Governance Committee

IEX Rule 14.405(e)(1)(A) requires that director nominees may be selected (or recommended for selection by the board of directors) by either independent directors constituting a majority of the board's independent directors or a nominations committee comprised solely of independent directors. With respect to LTSE Listings Issuers, proposed Rule 14A.405(d)(1) would require that director nominees must be selected (or recommended for selection by the board of directors) by a nominating/corporate governance committee comprised solely of independent directors, rather than independent directors constituting a majority of the board's independent directors. The Exchange believes that, in view of the differentiated focus of the LTSE Listings category, requiring LTSE Listings Issuers to maintain a separate, independent nominating/corporate governance committee would better facilitate selection of directors that are aligned with such focus. In addition, another national securities exchange has a substantially similar requirement, requiring that listed companies select director nominees

through a separate nominating committee composed entirely of independent directors.<sup>33</sup>

Notwithstanding the requirement that the nominating/corporate governance committee be comprised solely of independent directors, proposed Rule 14A.405(d)(2) would provide that the nominating/corporate governance committee may include a non-independent director if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of an LTSE Listings Issuer and its shareholders and certain other conditions are satisfied. In addition, proposed Rule 14A.405(d)(3) would provide that exclusively independent director oversight of director nominations shall not be required in cases where the right to nominate a director legally belongs to a third party; provided that an LTSE Listings Issuer would still be obligated to comply with all committee composition requirements. These limited exceptions are consistent with exceptions contained in the Exchange's corresponding rules for companies other than LTSE Listings Issuers.<sup>34</sup>

IEX Rule 14.405(e)(5) provides that the requirements regarding director nominations set forth in IEX Rule 14.405 do not apply if the issuer is subject to a binding obligation that requires a director nomination structure inconsistent with IEX Rule 14.405 and such obligation pre-dates the approval of IEX Rule 14.405. Proposed Rule 14A.405(d)(4), however, would provide that LTSE Listings Issuers may not rely on this exception. The Exchange believes that this provision, which would permit a nomination process and board composition based on a pre-existing obligation that pre-dates when the

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<sup>33</sup> See NYSE Listed Company Manual, Rule 303A.04.

<sup>34</sup> See IEX Rules 14.405(e)(3) and (4).

IEX rules were approved, is inconsistent with the goal of allowing longer-term shareholders to gain voting rights over time and the flexibility is unnecessary given that the required timing for the pre-existing obligation is so limited.

Proposed Rule 14A.405(d)(6)(A) would require that each LTSE Listings Issuer adopt a formal written nominating/corporate governance committee charter (and that the nominating/corporate governance committee review and reassess the adequacy of the formal written charter on an annual basis) specifying, among other things, the scope of the nominating/corporate governance committee's responsibilities, and how it will carry out those responsibilities, including structure, processes and membership requirements, and that the nominating/corporate governance committee must report regularly to the board of directors. The explicit requirement to report regularly is intended to ensure that the board of directors has insight into the nominating/corporate governance committee's work.

Proposed Rule 14A.405(d)(6)(B) would require that the nominating/corporate governance committee's charter be made available on or through an LTSE Listings Issuer's website. The Exchange believes that increased transparency about the nominating/corporate governance committee's functions and policies is in the best interest of long-term investors, and companies that hold themselves to a set of long-term standards should make such information available. The Exchange notes that Item 407 of Regulation S-K<sup>35</sup> requires that a public company's nominating committee charter be either available to security holders on the company's website or as an appendix to its

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<sup>35</sup> 17 CFR 229.407.

proxy or information statement provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the company's last fiscal year. The Exchange understands that many long-term focused investors expect to be able to readily access corporate governance information, such as board committee charters, on a company's website rather than by searching through a company's SEC filings, and accordingly the Exchange believes that it is appropriate to explicitly impose this requirement.

Proposed Rule 14A.405(d)(5) would provide LTSE Listings Issuers additional flexibility by permitting the board of directors to allocate the nominating/corporate governance committee's responsibilities to committees of their own denomination, provided that the committee is comprised entirely of independent directors and that such committee is subject to a formal written charter that satisfies the requirements of proposed Rule 14A.405(d)(6), including that such committee report regularly to the board of directors.

(iii) Additional Audit Committee and Compensation Committee Requirements

As is the case with all issuers listed on the Exchange, LTSE Listings Issuers are required to comply with the audit committee and compensation committee requirements set forth in IEX Rules 14.405(c) and (d). LTSE Listings Issuers, however, would additionally be required to comply with audit committee and compensation committee requirements set forth in proposed Rule 14A.405.

Specifically, under proposed Rules 14A.405(a) and 14A.405(b)(2), the audit committee and compensation committee charters must specify that each committee will

report regularly to the board of directors. While the Exchange believes that it is inherent in any public company's board and committee organizational structure that board committees report regularly to the board, in view of the focus of the LTSE Listings category, the Exchange also believes it is appropriate to make this requirement explicit for LTSE Listings Issuers. In addition, the charters of each of the audit committee and compensation committee must be made available on or through an LTSE Listings Issuer's website. The Exchange notes that Item 407 of Regulation S-K<sup>36</sup> under the Securities Act of 1933<sup>37</sup> requires that a public company's audit and compensation committee charters be either available to security holders on the company's website or as an appendix to its proxy or information statement provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the company's last fiscal year. The Exchange understands that many long-term focused investors expect to be able to readily access corporate governance information, such as board committee charters, on a company's website rather than by searching through a company's SEC filings, and accordingly the Exchange believes that it is appropriate to explicitly impose this requirement. The Exchange further notes that another national securities exchange requires companies listed on their exchange to meet similar requirements with respect to their audit committee and compensation committee.<sup>38</sup>

In addition to the foregoing charter requirements, proposed Rule

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<sup>36</sup> 17 CFR 229.407.

<sup>37</sup> 15 U.S.C. 77a et seq.

<sup>38</sup> See NYSE Listed Company Manual, Rules 303A.05(b) and 303A.07(b).

14A.405(b)(2)(A)(ii) would require that the compensation committee charter specify that the compensation committee must adopt executive compensation guidelines. Proposed requirements with respect to executive compensation guidelines are described under “Long-Term Alignment of Executive Compensation” below. Proposed Rule 14A.405(b)(1) would provide LTSE Listings Issuers additional flexibility by permitting the board of directors to allocate the compensation committee’s responsibilities to committees of their own denomination, provided that the committee is comprised entirely of independent directors and that such committee is subject to a formal written charter that satisfies the requirements of IEX Rule 14.405(d)(1) and proposed Rule 14A.405(b)(2), including that such committee report regularly to the board of directors.

(iv) Corporate Governance Guidelines

Pursuant to proposed Rule 14A.409, each LTSE Listings Issuer would be required to adopt and disclose corporate governance guidelines. These corporate governance guidelines would be required to address director qualification standards, director responsibilities, director access to management, and director orientation and continuing education, among other things. In view of the differentiated focus of the LTSE Listings category, the Exchange believes that increased disclosure about the company’s approach to corporate governance through the adoption and disclosure of corporate governance guidelines is appropriate for LTSE Listings Issuers. In addition, the Exchange notes that the proposed corporate governance guideline requirements are similar to the requirements

imposed by the listing rules of another national securities exchange.<sup>39</sup>

Although proposed Rule 14A.409 would generally track the New York Stock Exchange's ("NYSE") corporate governance guidelines requirements, the LTSE Listings Rules would deviate from these requirements in certain respects. Specifically, proposed Rule 14A.409(a)(4) would require that a significant portion—no less than 40%—of director compensation be paid in stock-based compensation tied to long-term periods. An LTSE Listings Issuer would be required to disclose in its corporate governance guidelines what it considers to be "long-term" for this purpose. In addition, this proposed rule would require that LTSE Listings Issuers adopt director stock ownership guidelines, which must include minimum ownership requirements that can be met over the length of board service. These provisions are designed to ensure that LTSE Listings Issuers incentivize directors to focus on the long-term, but also provide LTSE Listings Issuers with flexibility to design their own plans for director compensation. In addition, the Exchange does not believe that these requirements would impose a significant burden on LTSE Listings Issuers, as the Exchange believes that issuers have already trended toward having equity represent a large portion of director compensation.<sup>40</sup> Proposed Rule 14A.409(a)(4) would also provide that LTSE Listings Issuers consider other means of aligning director compensation with long-term strategies, including deferred share

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<sup>39</sup> See NYSE Listed Company Manual, Rule 303A.09.

<sup>40</sup> See Yaron Nili, Trends in Board of Director Compensation, HLS Forum on Corporate Governance and Financial Regulation (April 13, 2015), available at <https://corpgov.law.harvard.edu/2015/04/13/trends-in-board-of-director-compensation>.

delivery, vesting periods or similar measures.

(B) Long-Term Strategy and Product Disclosures

The Exchange understands that LTSE’s analysis indicated that long-term investors generally value information regarding a company’s long-term plans and objectives, that may not otherwise be required to be disclosed. In particular, this information could (i) provide long-term investors with greater information upon which to evaluate a company’s progress toward long-term goals and (ii) allow companies to be evaluated based on whether they are making prudent management and strategic decisions that investors believe enhance long-term growth. The proposed LTSE Listings Rules would therefore require—in addition to and separate from all disclosures required under applicable securities laws, the Commission’s rules and the Exchange’s other rules—that LTSE Listings Issuers provide certain supplemental disclosures regarding an LTSE Listings Issuer’s long-term strategy and products (the “LTSP Disclosures”).<sup>41</sup> The LTSP Disclosure requirements are supplemental to and would not supersede or impact other disclosure obligations. The LTSP Disclosures would be subject to all securities law requirements just as other public company disclosures. Proposed Rule 14A.207(a) would remind LTSE Listings Issuers that all disclosures must comply with applicable law and Commission rules and regulations, including rules and regulations pertaining to the use and reconciliation of non-GAAP financial measures and any securities law obligations regarding updating or correcting prior public statements or disclosures.

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<sup>41</sup> An LTSE Listings Issuer would be required to include its LTSP Disclosures in its Annual Report Supplement. See infra Section 3.a(3)(B)(v) (Location and Manner of LTSP Disclosures).

(i) Disclosure of Long-Term Growth Strategy

Proposed Rule 14A.207(c) would require each LTSE Listings Issuer to include in its LTSP Disclosures a discussion of the company’s “Long-Term Growth Strategy.” Long-Term Growth Strategy would be defined for these purposes as “the strategy, as determined by management and the board of directors and approved by the LTSP Committee, that is focused on achieving long-term growth.”<sup>42</sup> This requirement 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. By disclosing a Long-Term Growth Strategy, managers have the opportunity to explain to shareholders the long-term goals and objectives specific to their company, and then be held responsible for achieving those objectives. While the disclosure of the Long-Term Growth Strategy must include the information described below, an LTSE Listings Issuer is otherwise free to design its Long-Term Growth Strategy with the explicit oversight and approval of its LTSP Committee.

Proposed Rule 14A.207(c)(1)(A) would require that each Long-Term Growth Strategy disclosure describe how the LTSE Listings Issuer defines “long-term” for purposes of its Long-Term Growth Strategy and how it made this determination.<sup>43</sup> Under

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<sup>42</sup> See proposed Rule 14A.002(a)(11).

<sup>43</sup> The Exchange understands that LTSE Listings Issuers in different industries may have different definitions of “long-term.” For example, a pharmaceutical company that must spend years researching and testing the efficacy of a proposed new drug may have a much longer definition of “long-term” than a clothing retailer.

proposed Rule 14A.207(c)(1)(B), LTSE Listings Issuers would be required to include in the Long-Term Growth Strategy disclosure a discussion of the “Leading Indicators” that the company uses to measure its progress toward its long-term goals. “Leading Indicators” are defined as those quantitative metrics, either financial or non-financial, that an LTSE Listings Issuer’s management uses to help it forecast revenue, profit, or other common after-the-event measures of long-term success.<sup>44</sup> By way of example, a biotech company may use as a Leading Indicator the number of patents it has obtained. A media company, on the other hand, may prefer to use as a Leading Indicator the number of page views or ad clicks its website has received.

LTSE Listings Issuers must also discuss key milestones that the LTSE Listings Issuer aims to achieve with respect to its Leading Indicators and must report on the progress the LTSE Listings Issuer has made in achieving these key milestones. The LTSP Disclosures require use of Leading Indicators and key milestones so that companies may define and share with investors those long-term metrics that the company itself views as critical to measuring its success, providing investors insight into the company’s internal analysis and allowing investors to consider the company’s progress towards these long-term goals.

Proposed Rule 14A.207(c)(1)(C) would require that each Long-Term Growth Strategy disclosure include a discussion of any changes to an LTSE Listings Issuer’s Long-Term Growth Strategy since its last publication, including changes to Leading Indicators and/or key milestones. An LTSE Listings Issuer’s Long-Term Growth Strategy

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<sup>44</sup> See proposed Rule 14A.002(a)(10).

may evolve as its business develops and new goals are created or changed. This disclosure requirement would provide greater transparency by ensuring that long-term investors are made aware of any such changes to the issuer's Long-Term Growth Strategy and are able to measure an LTSE Listings Issuer's progress toward these goals.

Pursuant to proposed Rule 14A.207(c)(2), the Long-Term Growth Strategy must include details relating to different businesses of the LTSE Listings Issuer if the information is material to the overall strategy. The purpose of this proposed rule is to account for the fact that issuers may have diverse businesses with different strategic objectives. For example, a company may operate in multiple industries or have products tailored to different markets. This rule requires LTSE Listings Issuers to provide information relating to different strategies if such information is material to the broader long-term strategy.

While transparency into long-term strategy is an important goal and critical for long-term focused investors, in certain situations the Exchange understands that public disclosure of this information could risk competitive harm to the company. In these limited situations, proposed Rule 14A.207(c)(3) would provide an exemption. Specifically, if an LTSE Listings Issuer's LTSP Committee makes a determination that disclosure of any aspect of the LTSE Listings Issuer's Long-Term Growth Strategy would be "reasonably likely to result in material harm" to the company's competitive position, the LTSE Listings Issuer could exclude such information from its LTSP Disclosures, so long as the LTSE Listings Issuer complies with all applicable securities

laws.<sup>45</sup> Any such determination would be required to be documented by the LTSP Committee and made in accordance with its fiduciary duties. In addition, proposed Rule 14A.405(c)(3)(B)(iv) would require that an LTSE Listings Issuer's LTSP Committee develop and disclose in its charter a process for making this determination and for determining that withholding the disclosure would not contravene any applicable securities laws. In order to ensure that investors are aware that the LTSP Disclosures of an LTSE Listings Issuer relying on this exemption are incomplete, proposed Rule 14A.207(c)(3) would require that such an LTSE Listings Issuer disclose in its LTSP Disclosures that it is withholding certain information as a result of competitive concerns. To ensure that investors have the opportunity to assess the judgment of the LTSP Committee regarding the withholding of competitive information, upon the time that any withheld information is no longer competitively sensitive, proposed Rule 14A.207(c)(3) would require that an LTSE Listings Issuer disclose that information in its LTSP Disclosures, even though this information may no longer be relevant to its current Long-Term Growth Strategy.

(ii) Disclosure Related to Buybacks

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<sup>45</sup> This proposed requirement has the same objective as Instruction 4 of Item 402(b) of Regulation S-K, which provides that an SEC reporting company is not required to disclose in SEC filings certain information regarding compensation “involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant.” See also Question 118.04 of Regulation S-K Questions and Answers of General Applicability (September 21, 2017), available at <https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm>.

As noted above,<sup>46</sup> particular concern has been raised regarding the risk that some companies pressured to meet short-term goals may spend cash to repurchase their own shares rather than on making long-term investments. As a result, the Exchange believes that some long-term investors are particularly interested in enhanced disclosure regarding companies' share repurchase activity. Proposed Rule 14A.207(d) would therefore require that each LTSE Listings Issuer disclose certain information relating to "Buybacks" or issuer repurchases in addition to those required to be disclosed pursuant to Item 703 of Regulation S-K<sup>47</sup> under the Securities Act of 1933.<sup>48</sup> Specifically, under proposed Rule 14A.207(d) each LTSE Listings Issuer would be required to disclose in its LTSP Disclosures its "EPS Net of Buybacks," defined in proposed LTSE Listings Rule 14A.002(a)(6) as the quotient calculated by dividing (i) net income (as reported in the LTSE Listings Issuer's financial statements in its most recent Annual Report) by (ii) the sum of outstanding shares and shares that were subject to a Buyback during the prior fiscal year. This disclosure requirement is designed to provide investors with transparency into the impact of Buybacks on a company earnings per share for any particular period, *i.e.*, by indicating what the company's earnings-per-share would have been had the company not engaged in repurchases.

(iii) Disclosure Related to Human Capital Investment

Proposed Rule 14A.207(e) would require that each LTSE Listings Issuer disclose

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<sup>46</sup> See *supra* notes 13–14 and accompanying text.

<sup>47</sup> 17 CFR 229.703.

<sup>48</sup> 15 U.S.C. 77a *et seq.*

in its LTSP Disclosures the extent to which the LTSE Listings Issuer's selling, general and administrative expenses ("SG&A") (as reported in the LTSE Listings Issuer's most recent Annual Report)<sup>49</sup> consisted of "Human Capital Investment." For these purposes, "Human Capital Investment" refers to the aggregate amount an LTSE Listings Issuer spends on formal training of workers in new skills to improve job performance, including, among other things, fees or expenses related to personnel hired or retained to train employees, training materials, tuition assistance and continuing education or similar programs.

Each LTSE Listings Issuer must also disclose the amount spent on Human Capital Investment per full-time equivalent employee. The Exchange understands that long-term investors generally are interested in this metric, and the disclosure requirement is thus designed to enable long-term investors to conduct a comparative analysis of Human Capital Investment per employee across LTSE Listings Issuers of different sizes.

The costs related to Human Capital Investment are generally accounted for within SG&A, and therefore considered an expense rather than an investment. The Exchange understands that long-term focused investors and companies believe that it is in the long-term interest of companies to make investments in their workforce to retain them and improve their skills. Although, as an accounting matter, these may be viewed as a short-

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<sup>49</sup> "Annual Report" is defined in Proposed Rule 14A.002(a)(1) as "consistent with IEX Rule 14.207(d), the annual report made available to Shareholders containing audited financial statements of the LTSE Listings Issuer and its subsidiaries (which, for example, may be on Form 10-K, 20-F, 40-F or N-CSR) within a reasonable period of time following the filing of the annual report with the Commission."

term costs, the Exchange believes that long-term focused investors value information regarding the extent to which companies are making investments in the long-term development and success of its employees.

(iv) Disclosure Related to Research and Development

The Exchange understands that investments in research and development (“R&D”) are generally considered long-term investments for companies. LTSE’s analysis indicated that additional data on R&D investment is particularly sought after by long-term focused investors. Therefore, proposed Rule 14A.207(f) would require that each LTSE Listings Issuer disclose in its LTSP Disclosures the amount of R&D spending that is short-term focused and the amount that is long-term focused. This requirement is intended to provide investors with greater transparency into an LTSE Listings Issuer’s planning and goals around R&D programs, particularly in light of the risk that a company may under-invest in R&D in order to meet shorter-term financial metrics. Because each company and industry differs in its definition of long-term and short-term time horizons, proposed Rule 14A.207(f) provides flexibility by allowing LTSE Listings Issuers to determine their own definitions of short-term and long-term R&D programs, provided that an LTSE Listings Issuer disclose the definitions used and the process by which they determined them.

(v) Location and Manner of LTSP Disclosures

Proposed Rule 14A.207(b) would require an LTSE Listings Issuer to make its LTSP Disclosures publicly available pursuant to a supplement to the LTSE Listings Issuer’s Annual Report (an “Annual Report Supplement”). The Annual Report

Supplement must be distributed to shareholders along with, and in the same manner as, the LTSE Listings Issuer's Annual Report. In addition, an LTSE Listings Issuer would be required to make the Annual Report Supplement available on or through its website and include a statement in its Annual Report that the LTSP Disclosures are available in the Annual Report Supplement and provide the website address. These requirements are designed to facilitate transparency and ensure that shareholders are aware of and able to access an LTSE Listings Issuer's LTSP Disclosures. LTSE Listings Issuers would also be required to notify IEX Regulation<sup>50</sup> once its Annual Report Supplement has been made publicly available on its website. This requirement is designed to help the Exchange monitor for compliance with the LTSP Disclosure requirements.

(vi) Review by LTSP Committee

Pursuant to proposed Rule 14A.207(b), the LTSP Disclosures would be required to be reviewed and approved by the LTSP Committee on at least an annual basis. Based on its review, the LTSP Committee must determine whether to recommend to the board of directors that the LTSP Disclosures be included in the Annual Report Supplement.<sup>51</sup> Any board and committee approvals should be reflected in board resolutions as

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<sup>50</sup> IEX Regulation is the department of the Exchange or designated employees of the Exchange that supervise, administer, or perform the regulatory functions of the Exchange, including the administration of any regulatory services agreements with another self-regulatory organization to which the Exchange is a party. See IEX Rule 1.160(q).

<sup>51</sup> This proposed requirement is modeled after the audit committee paradigm in Regulation S-K, which requires the audit committee to state whether it recommends to the board of directors that the audited financial statements be included in the annual report on Form 10-K. See 17 CFR 229.407(d)(3)(i)(D).

appropriate. This requirement is intended to increase alignment between board members and company managers on the company's long-term focus and helps to ensure that adequate board focus is placed on long-term strategy.

(vii) Disclosures Upon Initial Listing

As described above, an LTSE Listings Issuer would be required to include its LTSP Disclosures in its Annual Report Supplement. However, a newly public LTSE Listings Issuer may not provide its Annual Report Supplement to shareholders until months after its initial public offering. Therefore, to ensure that shareholders obtain information on a timely basis, the LTSE Listings Rules would include transitional disclosure provisions for newly listed issuers. Specifically, proposed Rule 14A.207(g)(1) would provide that, no later than at the time of its initial listing, an LTSE Listings Issuer must make the disclosure required by proposed Rule 14A.207(c)(1) (Disclosure of Long-Term Growth Strategy) publicly available on its website. Such disclosure must be made in compliance with applicable rules and regulations relating to the dissemination of free writing prospectuses. After its initial listing, an LTSE Listings Issuer would provide this disclosure in its Annual Report Supplement, as described above. Similarly, proposed Rule 14A.207(g)(2) would provide that, after initial listing, an LTSE Listings Issuer must make the disclosures required by proposed Rule 14A.207(d) (Disclosure Related to Buybacks), Rule 14A.207(e) (Disclosure Related to Human Capital Investment) and Rule 14A.207(f) (Disclosure Related to Research and Development) publicly available on its website by the earlier of when the company files its next Form 10-K or Annual Report

Supplement.<sup>52</sup> After its initial listing, an LTSE Listings Issuer would provide this disclosure in its Annual Report Supplement, as described above.

(C) Long-Term Alignment of Executive Compensation

The Exchange believes that long-term focused companies seek to align the compensation of their Executive Officers<sup>53</sup> with the long-term performance of the company, while excessively short-term compensation instruments could promote incentives that are not aligned with long-term performance. Proposed Rule 14A.405(b)(3) would therefore require that an LTSE Listings Issuer's compensation committee adopt a set of executive compensation guidelines applicable to Executive Officers that are designed to link executive compensation to the long-term value of the LTSE Listings Issuer. The compensation committee would be required to include in the executive compensation guidelines general principles for determining the form and amount of Executive Officer compensation (and for reviewing those principles, as appropriate). In addition, the executive compensation guidelines would be required to be consistent with certain minimum standards described below. These requirements are intended to ensure that LTSE Listings Issuers design their executive compensation plans in accordance with specified long-term parameters, but also provide sufficient flexibility to allow such issuers to remain competitive in crafting individual compensation packages.

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<sup>52</sup> The disclosures are required to be made the "earlier of" when a company files a Form 10-K or Annual Report Supplement to account for the fact that, for an IPO company, a 10-K filing may significantly precede the first annual meeting.

<sup>53</sup> IEX Rule 14.405(a)(1) defines "Executive Officer" for these purposes as persons meeting the definition of "officer" under Rule 16a-1(f) under the Act.

(i) Consistency with Long-Term Growth Strategy

Proposed Rule 14A.405(b)(3)(A) would require that the compensation committee ensure that the time periods and performance metrics used to determine Incentive-Based Compensation<sup>54</sup> for Executive Officers are consistent with an LTSE Listings Issuer's Long-Term Growth Strategy. Since the members of the LTSP Committee would be the directors with the greatest involvement in the LTSE Listings Issuer's Long-Term Growth Strategy, the compensation committee may consult with the LTSP Committee in assessing whether such time periods and performance metrics are consistent with the LTSE Listings Issuer's Long-Term Growth Strategy.

In addition, an LTSE Listings Issuer would be required to disclose in its proxy statement or, if no proxy statement is filed, its Annual Report Supplement, whether or not the compensation committee has determined that the time periods and performance metrics used to determine Incentive-Based Compensation for Executive Officers are consistent with LTSE Listings Issuer's Long-Term Growth Strategy.

(ii) Long-Term Compensation and Vesting Periods

Proposed Rule 14A.405(b)(3)(B)(i) would prohibit an LTSE Listings Issuer from providing Executive Officers with any Incentive-Based Compensation that is tied to a financial or performance metric that is measured over a time period of less than one year, or grant any time-based equity compensation that has any portion that vests in less than a year from the grant date (or from the hire date, in the case of new hire grants). By

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<sup>54</sup> Pursuant to proposed Rule 14A.002(a)(8), Incentive-Based Compensation would be defined as "any variable compensation, fees, or benefits that serve as an incentive or reward for performance."

requiring Incentive-Based Compensation and time-based equity compensation to be tied to time periods of at least one year, the LTSE Listings Rules are designed to require that LTSE Listings Issuers avoid creating potential incentives to manage for short-term results, encouraging management to focus on longer-term time horizons.

Proposed Rule 14A.405(b)(3)(B)(ii) would require that equity compensation awarded to Executive Officers vest over a period (the “Vesting Period”) of at least five years. This minimum five-year Vesting Period is intended to ensure that executive compensation is tied to long-term company performance. In addition, while LTSE Listings Issuers would have flexibility in determining the specific vesting schedule within the Vesting Period (i.e., the percentage of total equity compensation vested per year), the vesting schedule would be required to reflect the long-term focus of the equity grant. For example, a ten-year vesting schedule that vested 90% of the total equity compensation in the first year would not be consistent with a long-term focus.

The Exchange understands, however, that there may be certain situations in which accelerated vesting would be appropriate and would not undermine the underlying purpose of this provision. As a result, proposed Rule 14A.405(b)(3)(B)(ii) would allow for accelerated vesting upon the death of an Executive Officer or the occurrence of a disability that renders an Executive Officer permanently unable to remain employed at the LTSE Listings Issuer in any capacity. Whether to adopt exceptions of this type would be left to the discretion of the LTSE Listings Issuer and would be required to be outlined in the agreement providing the equity grant.

While the LTSE Listings Rules seek to maintain a long-term focus in compensation, there may be exceptional circumstances in which the payment of shorter-

term Incentive-Based Compensation or shorter-term Vesting Periods are consistent with this focus and may be required for specific business purposes. Therefore, proposed Rule 14A.405(b)(3)(B)(iii) would provide that the compensation committee may provide alternative time periods for incentive and equity compensation if there is a business necessity and the LTSE Listings Issuer discloses and explains such business necessity in the LTSE Listings Issuer's proxy statement, or if the LTSE Listings Issuer does not file a proxy statement, in the LTSE Listings Issuer's Annual Report Supplement. To ensure that this exception remains limited, the rule would also prohibit the amount of equity awards granted in the aggregate that vests before the first anniversary of the grant date, or that does not meet the minimum five-year vesting schedule, from exceeding 5% of the total number of shares authorized for grant in any fiscal year.

Proposed Rule 14A.405(b)(3)(B)(iv) would provide that the compensation committee must determine appropriate Vesting Periods and amounts, as well as holding periods, for equity compensation awarded to Executive Officers that apply following an Executive Officer's retirement or resignation. Such Vesting Periods and amounts would also be required to be consistent with the requirements set forth in proposed Rule 14A.405(b)(3)(B)(ii) described above. The compensation provisions of the LTSE Listings Rules are premised on the idea that Executive Officers having financial interests in the long-term performance of the company—even after their departure from the company—will have a greater incentive to conduct business with long-term performance in mind and to undertake efforts for effective succession and departure planning. The Exchange understands that business needs and market practice may vary for different companies in different industries and sectors. Therefore, the specific schedule for vesting

and holding is left for determination by the individual LTSE Listings Issuer, but each LTSE Listings Issuer is required to provide such a schedule to promote these underlying purposes.

(iii) Exemption for Existing Agreements Prior to Listing

The Exchange appreciates that an issuer may have entered into compensation arrangements prior to deciding whether to list on LTSE Listings and recognizes that it may impose an undue burden on such companies if they were required to unwind executive compensation plans that have been in effect for an extended period of time in order to list on LTSE Listings. Therefore, proposed Rule 14A.405(b)(3)(C) would provide an exemption from the executive compensation requirements contained in the LTSE Listings Rules for any executive compensation that is subject to an existing written agreement entered into at least one year prior to the initial listing of an LTSE Listings Issuer on the Exchange. The proposed exemption for preexisting compensation arrangements contains a one-year look-back period that is designed to assure that the exempted compensation arrangements were bona fide preexisting arrangements, and not entered into shortly before applying for listing on LTSE Listings in order to avoid the restrictions contained in the LTSE Listings Rules. In addition, the use of this exemption must be disclosed in the Annual Report Supplement.

(iv) Smaller Reporting Companies

IEX Rule 14.405(d)(5) exempts “Smaller Reporting Companies,” as defined in

Rule 12b-2 under the Act,<sup>55</sup> from certain compensation committee requirements. Notwithstanding these exemptions that otherwise apply to companies listed on the Exchange, Proposed Rule 14A.405(b)(4) would provide that an LTSE Listings Issuer that is a Smaller Reporting Company must adopt the executive compensation guidelines described above. In addition, such an issuer would be required to certify that it has adopted a formal written compensation committee charter or board resolution that specifies the additional compensation committee charter requirements for LTSE Listings Issuers—that the compensation committee must report regularly to the board of directors and adopt executive compensation guidelines in accordance with proposed Rule 14A.405(b)(2). The Exchange believes that, notwithstanding that Smaller Reporting Companies may have less resources than other issuers, these compensation committee requirements are an important feature of the LTSE Listings Rules and are a key part of the differentiated choice provided by the LTSE Listings category that long-term focused investors find important, and that accordingly, Smaller Reporting Companies electing to list on LTSE Listings should be required to comply with such compensation committee requirements.

(D) Long-Term Shareholder Voting Structure

Consistent with the focus of the LTSE Listings category to provide a differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation, proposed Rule 14A.413(b) would require

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<sup>55</sup> See 17 CFR 240.12b-2.

that LTSE Listings Issuers maintain certain voting rights provisions in their corporate organizational documents that provide all shareholders with the ability, at the shareholders' option, to accrue additional voting power over time. As described more fully below, these provisions are designed to align with the long-term focus of the LTSE Listings category by providing long-term investors in an LTSE Listings Issuer with a greater role in corporate governance than short-term shareholders. The Exchange believes that long-term investors in a public company are more likely than short-term shareholders to exercise their voting rights in a manner that prioritizes long-term growth over short-term results.

Specifically, as of the date of the company's initial listing on LTSE Listings, each holder of equity securities listed on LTSE Listings must be entitled to an equal number of votes per share (the "Initial Voting Power") on a per class basis.<sup>56</sup> For each full calendar month in which a shareholder maintains continuous record ownership of shares, the voting power of such shares for so long as they are held of record by such shareholder would increase by at least one twelfth (1/12th) over the shares' Initial Voting Power on the last business day of the month, up to an amount that is ten times their Initial Voting

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<sup>56</sup> The Exchange notes that all shares listed on LTSE Listings must have a minimum level of Initial Voting Power and conform to the voting rights set forth in proposed Rule 14A.413. However, proposed Supplementary Material .01(a) to proposed Rule 14A.413 clarifies that proposed Rule 14A.413(b) would not prevent an LTSE Listings Issuer, so long as not inconsistent with IEX Rule 14.413, from (i) maintaining multiple classes of securities, including shares that have voting power per share in excess of the Initial Voting Power of the securities listed on the Exchange, and/or (ii) establishing or maintaining classes of shares not listed on the Exchange that do not meet the requirements of proposed Rule 14A.413(b).

Power.<sup>57</sup> If, at any time, a shareholder transfers its shares out of record ownership (whether for purposes of sale or otherwise), then on the date of such transfer, such shares will revert to entitling the shareholder to the Initial Voting Power of such shares. Because each holder of a class of equity securities listed on LTSE Listings would have an equal number of votes per share on the date of initial listing, each investor would have an equal opportunity to obtain increased voting rights over time and no shareholders would receive a preference over others.

(i) Mechanism for Tracking Holding Periods

The Exchange notes that tracking the ultimate beneficial ownership and length of continued ownership may be difficult or impossible for shares held through the common “street name” ownership system. Shares held in street name are registered on the books of an issuer’s transfer agent in the name of a nominee selected by the Depository Trust Company’s (“DTC”), with DTC maintaining records of the number of shares held for its various brokerage firm participants, and those brokerage firms each maintaining records of the number of shares held for its particular customers.<sup>58</sup> As a result, an issuer reviewing its own books and records maintained by its transfer agent may be unable to definitively determine who its ultimate “street name” shareholders are, or for how long

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<sup>57</sup> Pursuant to proposed Supplementary Material .01(b) to proposed Rule 14A.413, an LTSE Listings Issuer would be permitted to provide that the voting rights of shareholders holding of record increase at a rate greater than one twelfth (1/12th) per month, provided that the voting power of such shares may not increase to a level that exceeds ten times their Initial Voting Power.

<sup>58</sup> See generally Securities Exchange Act Release No. 76743 (December 22, 2015), 80 FR 81947 (December 31, 2015).

they have held their shares.

In order to track ownership for purposes of those shareholders opting to accrue additional voting power, the LTSE Listings Rules require that LTSE Listings Issuers look to whether a beneficial owner is also the holder of the shares in the LTSE Listings Issuer's records, i.e., as a holder of record. A shareholder that purchases its shares through a brokerage firm may initially receive shares held on its behalf in street name through the brokerage firm. However, through a Direct Registration Program ("DRP"),<sup>59</sup> a shareholder maintaining its shares in street name may request that its shares (or some portion of its shares) be transferred to instead be held in record ownership on the books of the issuer's transfer agent, or transferred back to its brokerage account.<sup>60</sup> For these purposes, a shareholder will be deemed to have record ownership as of the date the shareholder appears as the record owner on the books of the LTSE Listings Issuer directly, or through a third-party transfer agent. In addition, for these purposes, record owners of shares listed on LTSE Listings would include those holding a physical paper certificate of such shares and those holding such shares through a DRP.

Although requiring that shares be held in record ownership in order to accrue

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<sup>59</sup> The Exchange's rules already require that any issuer listed on the Exchange, including on the LTSE Listings, be eligible for a DRP. See IEX Rule 14.208. Because the ability to transfer shares to and from record ownership through a DRP is critical to tracking of long-term shareholders' voting rights for LTSE Listings Issuers, the exception contained in Rule 14.208(c) that allows certain foreign issuers to list securities on the Exchange that are not eligible for a DRP would not be available to LTSE Listings Issuers. See proposed Rule 14A.208.

<sup>60</sup> See Securities Exchange Act Release No. 76743 (December 22, 2015), 80 FR 81947 (December 31, 2015) at text accompanying n.92–93.

additional voting rights may raise administrative burdens on shareholders, the Exchange believes the ability for LTSE Listings Issuers to verify and track the ownership of these shareholders for purposes of calculating voting rights outweighs these burdens. In addition, because only those shareholders that expect to hold their shares for the long-term would opt to do so, the Exchange does not believe that electronically transferring the shares through a DRP would present a significant burden.

Calculating voting rights in accordance with the provisions of proposed Rule 14A.413(b) will be novel to LTSE Listings Issuers and their shareholders and may present challenges. However, the Exchange understands that several transfer agents have indicated to LTSE that they are able to develop software or systems to assist LTSE Listings Issuers with tracking their shareholder voting rights as calculated in accordance with proposed Rule 14A.413(b). In order to ensure that LTSE Listings Issuers have such tools available to them and facilitate accurate calculation of their shareholders' voting rights, proposed Rule 14A.413(b)(5) would require that, prior to listing securities on LTSE Listings, a prospective LTSE Listings Issuer must obtain from its transfer agent a certification confirming that the transfer agent has software or other systems or processes available to the LTSE Listings Issuer that will enable the transfer agent and the LTSE Listings Issuer to determine, as of a particular record date, the LTSE Listings Issuer's shareholders' voting rights calculated in accordance with LTSE Listings Rule 14A.413(b).

(ii) Shareholders Holdings Through Custodians

As noted above, in order to track ownership for purposes of those shareholders

opting to accrue additional voting power, the LTSE Listings Rules require that LTSE Listings Issuers look to whether a beneficial owner is also the holder of the shares in the LTSE Listings Issuer's records, *i.e.*, as a holder of record. The Exchange understands, however, that for various reasons, including regulatory requirements applicable to registered investment advisers and registered investment companies,<sup>61</sup> there may be shareholders that maintain ownership of securities through a third-party custodian, rather than in their own name. To accommodate such investors, proposed Supplementary Material .01(e) to proposed Rule 14A.413 would permit an LTSE Listings Issuer to recognize a shareholder as a holder of record solely for purposes of proposed Rule 14A.413(b), therefore entitled to increase its voting power over time, so long as the custodian for such shareholder becomes the shareholder of record and maintains its record ownership in a manner that indicates the name of the ultimate beneficial owner. By way of example, if Investment Fund ABC maintains custody of its assets through Bank XYZ, an LTSE Listings Issuer may recognize Investment Fund ABC as the record holder of the shares of an LTSE Listings Issuer solely for purposes of this rule if Bank XYZ registers the shares on the books of the LTSE-Listed Issuer as being owned by "Bank XYZ, as custodian for Investment Fund ABC." The Exchange believes that maintaining record ownership in this manner would allow an LTSE Listings Issuer to track that the period of time during which the shares have been held by the underlying investor, even if held through the custodian, while meeting the needs of those

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<sup>61</sup> See, *e.g.*, 17 CFR 275.206(4)-2 (with respect to registered investment advisers) and 15 U.S.C. 80a-17(f) and 17 CFR 270.17f-1-f-7 (with respect to registered investment companies).

shareholders that wish to maintain custody of their assets through a separate custodian.

(iii) Technical Changes in Record Ownership

Because of the mechanics of tracking long-term ownership, the term of ownership for purposes of LTSE Listings Issuers calculating a shareholder's increased voting rights is tied not to the actual date of a shareholder's acquisition or disposition of beneficial ownership, but the date the shares are transferred into or out of record ownership, *i.e.*, the date that the name of the owner on the LTSE Listings Issuer's books is changed. The Exchange acknowledges that this may result in situations where technical changes to ownership structure could cause a shareholder to lose any accrued long-term voting. As a general matter, the Exchange believes that a bright-line rule that can be clearly and consistently applied is preferable to the need to analyze the surrounding circumstances regarding particular changes to record ownership. Nonetheless, the Exchange recognizes that particular LTSE Listings Issuers may wish to allow a shareholder to maintain any accrued long-term voting that would otherwise be lost as a result of technical changes. As a result, proposed Supplementary Material .01(d) to proposed Rule 14A.413 would permit (but not require) an LTSE Listings Issuer to adopt a process by which a shareholder may demonstrate that, notwithstanding a technical change in record ownership, a change in beneficial ownership for purposes of this rule has not occurred. LTSE Listings Issuers choosing to do so may develop their own list of changes for which such waivers may be granted, so long as they are of a purely technical nature that clearly did not involve a change of beneficial ownership (such as re-titling ownership of shares due to a name change or a change from sole ownership to joint ownership with a spouse)

rather than an actual change of the person holding voting and investment discretion.

(iv) Potential Evasion of Loss of Long-Term Voting Upon Sale

The ability to accrue long-term voting is intended to incentivize those beneficial owners with voting and investment discretion over an LTSE Listings Issuer's shares to become long-term shareholders, provide a mechanism by which such long-term shareholders can evidence their long-term ownership (i.e., by becoming record holders), and increase the relative role of such long-term shareholders in the governance of an LTSE Listings Issuer. There may be situations where it becomes apparent to an LTSE Listings Issuer that, notwithstanding the record holder of its shares remaining the same, the beneficial ownership has changed, in an effort to evade the purposes of long-term voting. For example, the Exchange recognized the risk that a person may create a special-purpose entity (an "SPE") to hold shares of an LTSE Listings Issuer and register the SPE as the owner of the shares on the books of the LTSE Listings Issuer. Over time, the shares held by the SPE would accrue additional voting rights. Ordinarily, once those shares are transferred, they would lose any accrued long-term voting and revert to their Initial Voting Power. However, if the person were to instead transfer the ownership of the SPE to a third party, that transfer may not result in a change of ownership of the underlying shares of the LTSE Listings Issuer on the books and records of the LTSE Listings Issuer's transfer agent.

To address this situation, proposed Supplementary Material .01(c) to proposed Rule 14A.413 would permit (but not require) an LTSE Listings Issuer to include provisions in its governance documents such that if its board of directors adopted a

resolution reasonably determining that, notwithstanding technical compliance with the provisions of an LTSE Listings Issuer's governance documents relating to the increasing voting power of long-term shareholders and continuity of record ownership, there has in fact been a change in beneficial ownership with respect to shares held of record that would evade the purposes of LTSE Listings Rule 14A.413(b), such shares may be treated as being entitled only to their Initial Voting Power. Any LTSE Listings Issuer that provides for such a process in its governance documents must also provide a process through which a shareholder directly affected by such a determination may challenge it. The Exchange believes that, together, this should protect LTSE Listings Issuers from an attempt by shareholders to improperly sell increased voting rights to new shareholders, while affording affected shareholders with an opportunity to present additional information demonstrating that a change of beneficial ownership has not occurred.

(v) Consistency with the Exchange's Voting Rights Policy

The Exchange believes that LTSE Listings Rule 14A.413(b) is fully consistent with IEX Rule 14.413 (the Exchange's "Voting Rights Policy"). The Voting Rights Policy provides that the voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Act may not be disparately reduced or restricted through any corporate action or issuance. The Voting Rights Policy provides examples of corporate actions or issuances that could violate this policy, including the adoption of time-phased voting plans, which could encompass structures whereby investors gain

additional voting rights over time.<sup>62</sup> While the requirements of LTSE Listing Rule 14A.413(b) could be viewed as similar to time-phased voting plans, the Exchange does not believe that complying with LTSE Listing Rule 14A.413(b) would be inconsistent with the Voting Rights Policy, which bars a company already listed on the Exchange from undertaking the prohibited corporate actions. Because LTSE Listings Issuers would be required, as a pre-condition to listing on LTSE Listings, to already have in place a voting rights structure as of its date of its initial listing that complies with LTSE Listings Rule 14A.413(b), no new corporate action that disparately reduces voting rights would be taken subsequent to listing on the Exchange. In addition, pursuant to LTSE Listings Rule 14A.413(b), all shareholders of the same class of LTSE Listings Issuer's common stock listed on LTSE Listings will have the same voting rights in that any shareholder is eligible to accrue additional voting rights. To the extent that the effect of LTSE Listings Rule 14A.413(b) is that those shareholders that elect not to accrue additional voting power have their relative voting rights reduced relative to those that elect to accrue additional voting power, this impact is the result of a corporate action taken prior to

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<sup>62</sup> Another example of such a corporate action enumerated in the Voting Rights Policy is the issuance of a new class of super-voting stock. Proposed Supplementary Material .01(f) to proposed Rule 14A.413 would provide that for purposes of LTSE Listings, a class of securities shall be considered super-voting stock if (i) the Initial Voting Power of such class of securities exceeds the Initial Voting Power of any of the LTSE Listings Issuer's existing classes of common stock listed on LTSE Listings or (ii) the rate at which the voting power of such class may increase over time is greater than the corresponding rate for any of the LTSE Listings Issuer's existing classes of common stock listed on LTSE Listings. An LTSE Listings Issuer would not be prohibited by proposed Rule 14.413 from issuing additional shares of a class of stock that is listed on LTSE Listings or from issuing shares of a new class of stock that does not constitute super-voting stock as described above.

listing on LTSE Listings, known to investors prior to their determining to purchase shares of an LTSE Listings Issuer, and the actions or inactions of shareholders subsequent to listing. Thus, the Exchange believes that compliance with LTSE Listings Rule 14A.413(b) will not cause existing shareholders' voting rights to be disparately reduced or restricted through any corporate action or issuance within the meaning of IEX Rule 14.413.

In addition to the fact that the voting rights structure required under LTSE Listings Rule 14A.413(b) must be in place prior to listing on the Exchange, Supplementary Material .01 to IEX Rule 14.413 provides that the Exchange's "interpretations under the policy will be flexible, recognizing that both the capital markets and the circumstances and needs of the Exchange Companies change over time." Accordingly, the Exchange will interpret the policy flexibly with regard to its consistency with an LTSE Listings Issuer's voting structures designed to meet LTSE Listings Rule 14A.413(b). As the Commission recognized in approving the voting rights policies of other self-regulatory organizations that are substantively identical to IEX Rule 14.413, "there may be valid business or economic reasons for corporations" for companies to provide different voting rights to different shareholders, and that the voting rights policies "provide issuers with a certain degree of flexibility in adopting corporate structures, so long as there is a reasonable business justification to so doing, and such transaction is not taken or proposed primarily with the intent to disenfranchise."<sup>63</sup> The Exchange believes

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<sup>63</sup> See Securities Exchange Act Release No. 35121 (December 19, 1994), 59 FR 66570 (December 27, 1994) (approving rule changes adopting voting rights

that providing long-term investors with an opportunity for a greater voice in corporate governance is a reasonable business justification for an issuer to adopt the long-term voting structure required by proposed LTSE Listings Rule 14A.413(b) and that, because every shareholder has the opportunity to elect to accrue additional voting power, the structure would not be implemented with a primary purpose or intent to disenfranchise particular shareholders.

(E) Other Long-Term Requirements

The Exchange is proposing to include in the LTSE Listings Rules certain other rules also designed to encourage LTSE Listings Issuers to focus on long-term value creation. These proposed rules are described further below.

(i) Earnings Guidance

Proposed Rule 14A.420(a) would provide that LTSE Listings Issuers are generally prohibited from providing earnings guidance more frequently than annually. For these purposes, “Earnings Guidance” would be defined as any public disclosure made to shareholders containing a projection of the LTSE Listings Issuer’s revenues, income (including income loss), or earnings (including earnings loss) per share.<sup>64</sup> As noted above, LTSE’s research indicates that pressure to meet quarterly earnings guidance can cause

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policies of the New York Stock Exchange, American Stock Exchange, and National Association of Securities Dealers).

<sup>64</sup> See proposed Rule 14A.002(a)(6).

managers to sacrifice long-term growth for short-term performance.<sup>65</sup> Proposed Rule 14A.420(a) is intended to help companies alleviate the pressures surrounding the quarterly earnings process with respect to guidance, with a goal to ultimately shift the focus of both companies and investors toward longer-term milestones.

Notwithstanding the general prohibition on providing Earnings Guidance more frequently than annually, proposed Rule 14A.420(a) would permit an LTSE Listings Issuer to update previously issued Earnings Guidance at any time if it believes that such disclosure would be required (i) by IEX Rule 14.207(b)(1), which requires an issuer to promptly disclose to the public any material information that would reasonably be expected to affect the value of the issuer's securities or influence investors' decisions; (ii) by other applicable law (including any of the Commission reporting rules); or (iii) to make the previously issued Earnings Guidance not misleading.

Proposed Rule 14A.420(b) would clarify that any Earnings Guidance provided by an LTSE Listings Issuer, including updates and supplementary disclosure related to Earnings Guidance, shall be considered material information for purposes of IEX Rule 14.207(b)(1). As a result, LTSE Listings Issuers would be required to comply with the

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<sup>65</sup> See Graham, *supra* note 12; Yongtae Kim, Lixin (Nancy) Su, Xindong (Kevin) Zhu, Does the Cessation of Quarterly Earnings Guidance Reduce Investors' Short-Termism? (December 12, 2016), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2885624](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2885624). See also Chairman Jay Clayton, Hearing before the Senate Banking Committee on the Nomination of Jay Clayton, of New York, to be a Member of the Securities and Exchange Commission (March 23, 2017), available at <https://www.gpo.gov/fdsys/pkg/CHRG-115shrg24998/html/CHRG-115shrg24998.htm> (“In my experience, certain companies view the operational and other pressures inherent in quarterly earnings as costly, including because they detract from long-term planning and strategic initiatives.”).

disclosure and notification requirements set forth therein when disseminating such information.

(ii) Long-Term Stakeholder Policies

Proposed Rule 14A.425(a) would require that each LTSE Listings Issuer develop and publish a policy regarding the LTSE Listings Issuer's impact on the environment and community, and a policy explaining the LTSE Listings Issuer's approach to diversity. The Exchange 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. Each LTSE Listings Issuer may have different stakeholders and different views on these issues. The LTSE Listings Rules would not impose any requirements on the content of these policies. Rather, proposed Rule 14A.425(a) would only require that LTSE Listings Issuers adopt and publish a policy, providing LTSE Listings Issuers with flexibility in developing what they believe to be appropriate policies for their business, and providing investors with insight into an LTSE Listings Issuer's management of these issues.

Proposed Rule 14A.425(b) would require that each LTSE Listings Issuer review the policies required by proposed Rule 14A.425(a) at least annually and make such policies available on or through its website. In addition, each LTSE Listings 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 Supplement, 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 an LTSE Listings Issuer's

stakeholder policies. Although these policies must be made publicly available, proposed Supplementary Material .01 to proposed Rule 14A.425 would provide that the required stakeholder policies need not be stand-alone documents and may be included as part of other LTSE Listings Issuer policies or reports.

(iii) Website Requirements

Proposed Rule 14A.430 would require LTSE Listings Issuers to have and maintain a publicly accessible website. In addition, to the extent that an LTSE Listings Issuer would be required under any applicable provision of the LTSE Listings Rules to make documents available on or through its website, an LTSE Listings Issuer would be required to ensure that the website is accessible from the United States, the website clearly indicates in the English language the location of such documents on the website and that such documents are available in a printable version in the English language. The Exchange understands that many long-term focused investors expect to be able to access corporate governance and other information regarding companies in which they have invested through the company's website, and accordingly the Exchange believes that it is appropriate to explicitly impose this website requirement. For transparency purposes, various proposed LTSE Listings Rules, as discussed above, would require that materials be made available on an LTSE Listings Issuer's website.<sup>66</sup>

Proposed Rule 14A.430 is intended to specify in further detail the manner in

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<sup>66</sup> See proposed Rules 14A.207(a), 14A.207(f), 14A.405(a)(2), 14A.405(b)(1)(B), 14A.405(c)(2)(C), 14A.405(d)(2), 14A.405(d)(5)(B), 14A.407(a)(2)(B), 14A.409(b) and 14A.425(b).

which LTSE Listings Issuers may satisfy these website posting requirements. The Exchange notes that the foregoing website requirements are substantially similar to the requirements imposed by the listing rules of another national securities exchange.<sup>67</sup>

(iv) Certification Requirements

Proposed Rule 14A.435 would require that LTSE Listings Issuers make certain certifications to the Exchange. Specifically, proposed Rule 14A.435(a) would require LTSE Listings Issuers certify, at or before the time of listing, that all applicable listing criteria have been satisfied. This requirement is substantively identical to IEX Rule 14.202(b), which requires all issuers listed on the Exchange to submit such a certification. The Exchange proposes to repeat this requirement in the LTSE Listings Rules to clarify that the certification must include compliance with the LTSE Listings Rules, in addition to the Exchange's other listing rules.

Proposed Rule 14A.435(b) would require that the CEO of each LTSE Listings Issuer certify annually to the Exchange that the LTSE Listings Issuer is in compliance with proposed Rule Series 14A.400, which contain the corporate governance requirements of the LTSE Listings Rules, qualifying the certification to the extent necessary. Various IEX listing rules impose certification requirements,<sup>68</sup> and IEX Rule

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<sup>67</sup> See NYSE Listed Company Manual, Rule 307.00.

<sup>68</sup> See, e.g., IEX Rule 14.202(b) (requiring a company listing on the Exchange to certify, at or before the time of listing, that all applicable listing criteria have been satisfied); IEX Rule 14.405(c)(1) (requiring each company listed on the Exchange to certify that it has adopted a formal written audit committee charter and that the audit committee will review and reassess the adequacy of the formal written charter on an annual basis); IEX Rule 14.405(d)(1) (requiring each company

14.207 requires that a listed company must provide the Exchange with prompt notification after an Executive Officer of the company becomes aware of any noncompliance by the company with the corporate governance requirements set forth in IEX Rule 14.400. However, given the unique nature of the LTSE Listings Rules, the Exchange believes that adding an annual certification requirement for LTSE Listings Issuers will assist the CEO and senior management of such issuers in overseeing and assuring compliance with LTSE Listings corporate governance requirements on an ongoing basis. In addition, the Exchange notes that another national securities exchange similarly requires that the CEO of a company listed on that exchange certify annually that he or she is not aware of any violation by the company of that exchange's corporate governance listing standards.<sup>69</sup> Proposed Rule 14A.435(b) would also require each LTSE Listings Issuer CEO certify annually to the Exchange that the LTSE Listings Issuer has designated an employee responsible for ensuring that the voting power of the LTSE Listings Issuer's securities is determined in accordance with proposed Rule 14A.413(b) (Long-Term Voting). The Exchange believes that such an annual certification requirement would help ensure that LTSE Listings Issuers establish internal systems reasonably designed to assure compliance with LTSE Listing's long-term voting provisions.

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listed on the Exchange to certify that it has adopted a formal written compensation committee charter and that the compensation committee will review and reassess the adequacy of the formal written charter on an annual basis).

<sup>69</sup> See NYSE Listed Company Manual, Rule 303A.12(a).

(v) Issuer Designation Requirements and Dually-Listed Securities

The Exchange proposes to permit an LTSE Listings Issuer to list a class of securities that, in connection with its initial public offering, has been approved for listing on another national securities exchange (“Dually-Listed Securities”). The Exchange expects that this would foster competition among markets and further the development of the national market system. The Exchange would make an independent determination of whether such companies satisfy applicable listing standards and would require such companies to enter into a dual-listing agreement with the Exchange.<sup>70</sup> In the event that a company chooses to dually-list on both LTSE Listings and another national securities exchange in connection with its IPO, the Exchange would expect such other national securities exchange to be the LTSE Listings Issuer’s “Primary Listing Market.”<sup>71</sup> The Exchange is proposing certain additional rules to facilitate dual-listings.

Pursuant to proposed Rule 14A.210(b), an LTSE Listings Issuer that has Dually-Listed Securities would be required to notify the Exchange promptly if it receives oral or

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<sup>70</sup> The Exchange would also monitor the dually-listed LTSE Listings Issuer for compliance with all applicable IEX Rules on an ongoing basis, as it would for any other LTSE Listings Issuer.

<sup>71</sup> Pursuant to proposed Rule 14A.002(a)(14), “Primary Listing Market” would have the same meaning as that term is defined in the Nasdaq Unlisted Trading Privileges national market system plan and consistent with use of the term “listing market” in the Consolidated Quotation Service and Consolidated Tape Association national market system plans. Where an LTSE Listings Issuer is dually-listed on another national securities exchange, the initial trading of such issuer’s securities on the Exchange would not occur until after the completion of the opening auction for such securities on the first day of listing on the Primary Listing Market.

written notification from the other national securities exchange on which the LTSE Listings Issuer's Dually-Listed Securities are listed that such class of listed securities has fallen below the continued listing requirements of such other market. In addition, such an LTSE Listings Issuer would also be required to notify the other national securities exchange on which its Dually-Listed Securities are listed if it receives oral or written notification that such class of listed securities has fallen below the continued listing requirements of Chapter 14 of the IEX Rules or the LTSE Listings Rules contained in Chapter 14A of the IEX Rules.

Proposed Supplementary Material .01 to proposed Rule 14A.210 would clarify the application of certain IEX Rules, such as rules governing trading halts, for Dually-Listed Securities, given the fact that the Exchange would not be the Primary Listing Market. These proposed rules are designed to avoid creating potential confusion for investors and market participants with respect to Dually-Listed Securities. The Exchange notes that these provisions are substantially consistent with the rules of other national securities exchanges.<sup>72</sup>

(F) Proposed Rules Clarifying Application of Existing Exchange Rules

In addition to proposed rules that would encourage LTSE Listings Issuers to focus on long-term value creation, the Exchange is also proposing rules that would clarify the application of certain existing Exchange rules to LTSE Listings Issuers. These proposed

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<sup>72</sup> See Nasdaq Stock Market Equity Rules 5220 and IM-5220; CBOE BZX Exchange, Inc. Rule 14.3(d) and Rule 14.3 Interpretation and Policy .01.

rules are described further below.

(i) Supplemental Nature of LTSE Listings Rules

Proposed Rule 14A.001(a) would provide that the LTSE Listings Rules are supplemental listing standards applicable to LTSE Listings Issuers and that LTSE Listings Issuers must also fully qualify for listing under Chapter 14 of the Exchange's rules and the LTSE Listings Rules on an initial and ongoing basis. This provision is intended to clarify that LTSE Listings Issuers would be subject to the LTSE Listings Rules, as well as all other applicable listing rules of the Exchange, except as they may be specifically modified for LTSE Listings Issuers.

Proposed Rule 14A.001(b) would provide that LTSE Listings Issuers may only list common equity securities on LTSE Listings. Although the Exchange maintains listing rules relevant for other types of securities, such as American Depositary Receipts, preferred stock, rights and warrants, among others, such securities would not be eligible for listing on LTSE Listings. The Exchange is proposing to establish an LTSE Listings category to provide a differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation. At this time, the Exchange believes that, given that corporate governance and voting rights are more typically associated with common equity than other securities, it is most appropriate for a company electing to become subject to the LTSE Listings Rules to list its common equity on LTSE Listings.

(ii) Change of Control and Reverse Mergers

IEX Rule 14.102(a) provides that an Exchange-listed company must apply for

initial listing in connection with a transaction whereby the Exchange-listed company combines with, or into, an entity that is not listed on the Exchange, resulting in a change of control of the company and potentially allowing such entity to obtain an Exchange listing. The rule enumerates certain factors that the Exchange will consider in determining whether a change of control has occurred, including, but not limited to, changes in management, board of directors, voting power, ownership and financial structure. Proposed Rule 14A.102(a)(1) would impose an analogous requirement on LTSE Listings Issuers combining with, or into, an entity that is not listed on LTSE Listings, including an entity that is a not an LTSE Listings Issuer that is otherwise listed on the Exchange. The Exchange would consider the same factors enumerated in IEX Rule 14.102(a) when determining whether a change of control has occurred for purposes of proposed Rule 14A.201(a)(1). Proposed Rule 14A.102(a)(1) would also require that any combined entity applying for initial listing as permitted by this rule must agree to comply with all applicable requirements of Chapter 14A, including requirements relating to long-term voting set forth in proposed Rule 14A.413.

Proposed Rule 14A.102(a)(2) would clarify the impact of a change of control transaction on the proposed long-term voting provisions of LTSE Listings. Specifically, proposed Rule 14A.102(a)(2) would provide that if an initial listing following a change of control meets applicable listing requirements and the LTSE Listings Issuer is the surviving entity following the business combination, any shares of the LTSE Listings Issuer that have accrued additional voting power pursuant to proposed Rule 14A.413(b) prior to the business combination would retain such additional voting power following the business combination. On the other hand, if the non-LTSE Listings Issuer is the

surviving entity or a new entity is formed following the business combination, all shares of the class or classes of securities to be listed on LTSE Listings will have voting power equal to their Initial Voting Power at the time of such listing. Any additional voting power accrued pursuant to Rule 14A.413(b) by the shareholders of the non-surviving LTSE Listings Issuer prior to the business combination would not be retained.

IEX Rule 14.102(c) provides that a company that is formed by a Reverse Merger<sup>73</sup> is eligible to submit an application for initial listing only if the combined entity has satisfied certain conditions. Proposed Rule 14A.102(b) would clarify that such an entity would not be eligible to apply for initial listing on LTSE Listings. The Exchange does not believe a reverse merger company would be able to satisfy the requirements of the LTSE Listings Rules.

(iii) General Procedures and Prerequisites for Initial and Continued Listing on LTSE Listings

Proposed Rule 14A.200 would establish general procedures and prerequisites for initial and continued listing on LTSE Listings. This rule series is intended to supplement and clarify the application of the general procedures and prerequisites set forth in the IEX Rule Series 14.200.

IEX Rule 14.200(a) requires a company seeking the initial listing of one or more

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<sup>73</sup> A “Reverse Merger” is generally defined as “any transaction whereby an operating company becomes an Exchange Act reporting company by combining, either directly or indirectly, with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise.” See IEX Rule 14.002(a)(27).

classes of securities on the Exchange to participate in a free confidential pre-application eligibility review by the Exchange in order to determine whether it meets the Exchange's listing criteria. If, upon completion of this review, the Exchange determines that a company is eligible for listing, the Exchange will provide the company with a clearance letter, notifying the company that it has been cleared to submit an original listing application. Proposed Rule 14A.200(a) would clarify that if a company is seeking a listing on LTSE Listings, prior to providing a clearance letter, the Exchange must determine that the company is eligible for listing under the LTSE Listings Rules, in addition to the Exchange's other listing criteria.<sup>74</sup>

IEX Rule 14.200(b) outlines the applications and qualifications process for companies that have received a clearance letter. A company seeking to list on LTSE Listings would be required to follow this process, including executing a listing agreement and listing application, as required by IEX Rule 14.202(a). However, proposed Rule 14A.200(b) would clarify that a company seeking to list on LTSE Listings would execute a listing agreement and listing application on the forms designated by the Exchange for LTSE Listings Issuers. These forms and applications would be available from IEX Regulation.

IEX Rule 14.200(c) provides prerequisites for applying to list on the Exchange. A company seeking to list on LTSE Listings would be required to satisfy these

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<sup>74</sup> As is the case with other companies applying for listing on the Exchange, if the Exchange determines that a company is ineligible for listing on LTSE Listings, the company may request a review of IEX's determination pursuant to the process set forth in IEX Rule 9.555.

prerequisites, except as otherwise provided by proposed Rule 14A.200(c). For example, IEX Rule 14.203(c) provides that all securities initially listed on the Exchange, but for securities which are in any event book-entry only, must be eligible for a DRP, except that a foreign issuer is not subject to this requirement if it submits to the Exchange a written statement from an independent counsel in such company's home country certifying that a law or regulation in the home country prohibits compliance with this requirement. Because eligibility for a DRP is essential to the proper functioning of LTSE Listings' long-term shareholder voting provisions, proposed Rule 14A.200(c)(1) would provide that foreign issuers may not rely on the exception in IEX Rule 14.203(c) from the DRP eligibility requirement.

IEX Rule 14.203(d) provides that a company applying to list on the Exchange must pay all applicable fees as described in Rule Series 14.600. Proposed Rule 14A.200(c)(3) would provide that in lieu of paying all applicable fees as described in IEX Rule Series 14.600, a company seeking the initial listing of one or more classes of securities on LTSE Listings would be required to pay all applicable fees as described in LTSE Listings Rule Series 14A.600. This provision is intended to clarify that companies seeking to list on LTSE Listings are not required to pay two separate listing fees.

Proposed Rule 14A.200(c)(2) would provide that at the time that a company initially lists on LTSE Listings, the company may not already have any security listed for trading either on the Exchange (i.e., listed on IEX pursuant to IEX listing rules other than Chapter 14A) or on any other national securities exchange (unless dually listing on the other national securities exchange concurrently). The Exchange is initially limiting the availability of LTSE Listings to companies seeking to list on LTSE Listings concurrently

with their initial public offering (whether listing on LTSE Listings only or dually-listing on LTSE Listings and another national securities exchange concurrently). The Exchange may in the future seek to expand the availability of LTSE Listings to other companies seeking to list on LTSE Listings that are otherwise already listed on a national securities exchange.

(iv) Exemptions from Certain Corporate Governance Requirements

IEX Rule 14.407 provides exemptions from the Exchange's corporate governance rules for certain types of companies, sets forth phase-in schedules for, among other things, initial public offerings and companies emerging from bankruptcy and describes the applicability of the corporate governance rules to Controlled Companies.<sup>75</sup> Proposed Rule 14A.407 would clarify the application of these rules with respect to the LTSE Listings Rules, as described below.

IEX Rule 14.407(a) provides exemptions to certain of the Exchange's corporate governance requirements for asset-backed issuers and other passive issuers, cooperatives, Foreign Private Issuers,<sup>76</sup> limited partnerships and management investment companies. Proposed Rule 14A.407(a) would provide that an LTSE Listings Issuer may not rely on these exemptions with respect to the LTSE Listings Rules. The Exchange believes that

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<sup>75</sup> The term "Controlled Company" is defined in Rule 14.407(c)(1) as an Exchange-listed company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company.

<sup>76</sup> Pursuant to IEX Rule 14.002(a)(15), the term "Foreign Private Issuer" as used in the Exchange's rules has the same meaning as under Exchange Act Rule 3b-4.

exemptions for these entities is either (i) not necessary because LTSE Listings is only available for common equity or (ii) not appropriate given that LTSE Listings is designed to require particular minimum corporate governance. However, proposed Rule 14A.407(a) would clarify that a Foreign Private Issuer that is able to meet all applicable requirements of Chapter 14A, including the requirement to distribute an Annual Report Supplement, would be permitted to list on LTSE Listings.

IEX Rule 14.407(b) allows a company listed on the Exchange to phase-in its compliance with certain Exchange rules over a period of time in certain situations, including for initial public offerings, companies emerging from bankruptcy, transfers from other markets, and companies ceasing to be a Smaller Reporting Company. These phase-in schedules would apply to LTSE Listings Issuers in the same manner as they would apply to other companies listed on the Exchange. In addition to these phase-in schedules, proposed Rule 14A.407(b) would provide that an LTSE Listings Issuer that is listing in connection with its initial public offering or that is emerging from bankruptcy is permitted to phase-in its compliance with the requirement that the LTSP Committee be comprised of a majority of independent directors. Specifically, this rule would provide that at least one member of the LTSP Committee must be an independent director at the time of listing and a majority of the members of the LTSP Committee must be independent within 90 days of listing. This phase-in schedule is substantially similar to the corresponding phase-in schedules applicable to other board committees.<sup>77</sup>

IEX Rule 14.407(c) outlines how the Exchange's listing rules apply to a

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<sup>77</sup> See IEX Rule 14.407(b)(1).

Controlled Company. This rule provides that a Controlled Company is generally exempt from requirements to establish a compensation committee and requirements relating to independent director oversight of director nominations. These exemptions would apply to LTSE Listings Issuers in the same manner as they would apply to other companies listed on the Exchange. In addition to these exemptions, proposed Rule 14A.407(c)(1) would provide that a Controlled Company is exempt from the additional compensation committee and nominating/corporate governance committee requirements under proposed LTSE Listings Rules 14A.405(b) and 14A.405(d), except for the requirement to adopt executive compensation guidelines under proposed Rule 14A.405(b)(3). Proposed Rule 14A.407(c)(2) would provide that to the extent that a Controlled Company does not have a compensation committee, the independent directors on the LTSP Committee or the independent directors of the board of directors must be responsible for adopting the executive compensation guidelines.

(v) Notification of Noncompliance

IEX Rule 14.410 provides that a company listed on the Exchange must provide the Exchange with prompt notification after an Executive Officer of the company becomes aware of any noncompliance by the company with the requirements of Rule Series 14.400, which outlines the general corporate governance requirements for companies listed on the Exchange. Proposed Rule 14A.410 would supplement this requirement by requiring an LTSE Listings Issuer to provide the Exchange with prompt notification after an Executive Officer of the LTSE Listings Issuer becomes aware of any noncompliance by the LTSE Listings Issuer with the requirements of LTSE Listings Rule

Series 14A.400, which contains the supplemental corporate governance requirements for LTSE Listings Issuers.

(vi) Shareholder Approval Calculation

IEX Rule 14.412 sets forth the circumstances in which an Exchange-listed company is required to obtain shareholder approval prior to the issuance of securities in connection with the (1) the acquisition of the stock or assets of another company; (2) a change of control; (3) equity-based compensation of officers, directors, employees, or consultants; and (4) private placements. In some cases, such approval is required, among other potential triggers, if the common stock being issued “has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance ...” (the “Shareholder Approval Threshold”).<sup>78</sup> The Exchange believes that the purpose of this aspect of the rule is to ensure that existing shareholders have a voice in transactions that would materially dilute the voting power of their shares.

Ordinarily, determining whether an issuance equals or exceeds the Shareholder Approval Threshold would be a simple calculation: the issuer would multiply the number of shares to be issued by the voting power of such shares and divide by the voting power of the shares outstanding before the issuance. If this number equals or exceeds the Shareholder Approval Threshold, shareholder approval would be required. However, shares listed on LTSE Listings (or that are of the same class of securities that are listed on

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<sup>78</sup> IEX Rule 14.412(a)(1)(A). Shareholder approval may also be required if the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities. See IEX Rule 14.412(a)(1)(B).

LTSE Listings) may accrue voting power over time. As a result, even if the voting power of newly issued shares of an LTSE Listings Issuer is less than the Shareholder Approval Threshold at the time of the issuance, it may potentially be greater than the Shareholder Approval Threshold after a certain period of time, depending on how many of the new shares are registered in record name and accrue additional voting power over time, relative to the number of existing shareholders that do so.

IEX Rule 14.412 requires that a company listed on the Exchange receive shareholder approval in advance of the “potential issuance of common stock” where the “common stock has or will have upon issuance voting power” that would exceed the Shareholder Approval Threshold. The Exchange notes that, by its terms, IEX Rule 14.412 therefore could be read to look only to the voting power of the shares upon issuance, rather than the potential voting power of those shares after some period of time.<sup>79</sup> However, certain interpretations and supplementary material relating to other aspects of IEX Rule 14.412 do look to the potential for changes to the securities being issued, even past the initial issuance.<sup>80</sup> As a result, in light of the potential increased future voting power of new shares to be issued, the Exchange believes that it is appropriate, in

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<sup>79</sup> See, e.g., IEX Rule 14.412(a)(1)(A).

<sup>80</sup> Specifically, for the purposes of determining the number of shares to be issued in an offering of future-priced securities, the Exchange staff will “look to the maximum potential issuance of common shares.” See Supplementary Material .04 to IEX Rule 14.412. Future-priced securities are securities that are convertible into common stock at a conversion price that is linked to the market price of the underlying common stock at the time of conversion. In such cases, the lower the price of the company’s common stock at the time of conversion, the more shares of common stock the holder of the future-priced security would receive.

calculating the Shareholder Approval Threshold, to require that LTSE Listings Issuers assign a greater level of voting power to the newly issued shares than the Initial Voting Power of those shares, on the presumption that the ultimate voting power of those shares will increase over time.

The Exchange notes, however, that because shareholders that obtain shares in a transaction may or may not elect to hold their shares in record ownership, and may hold them in such manner for varying lengths of time, it is not possible to determine with precision how many shares issued in any transaction would accumulate additional voting power or the extent of voting power those shares will eventually attain. One potential approach would be to assume that all of the new shares in a proposed issuance will be registered in record name and held in that form for ten years, thereby accruing the maximum additional voting power (i.e., ten times the Initial Voting Power).<sup>81</sup> Under that approach, when conducting the shareholder approval calculation, the issuer would

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<sup>81</sup> This approach would be similar to the approach required for calculating the number of shares that may be issued pursuant to an offering of future-priced securities, as discussed supra note 80. However, the Exchange believes that this approach would not be appropriate for determining whether the voting power of an issuance by an LTSE Listings Issuer would exceed the Shareholder Approval Threshold. In addition to the reasons described below, the Exchange believes purchasers of convertible securities have a strong economic incentive to exercise their conversion rights and acquire common stock at some point in time. If the price of the underlying common stock has declined at the time of conversion, the number of shares of common stock that will be issued (and thus the dilution of existing shareholders) could increase significantly. While the Exchange believes that LTSE Listings Issuers will attract more long-term focused shareholders, not all shareholders will be long-term or have the incentive, economic or otherwise, to register their shares in record name and accrue additional voting power, and the Exchange therefore believes that, for a variety of reasons, many shareholders will never elect to do so.

multiply the voting power of the shares to be issued (the numerator of this calculation) by ten and would then divide that number by the existing voting power of the shares outstanding (the denominator of this calculation). The Exchange believes that issuers would then be required to obtain shareholder approval frequently, because they would be required to assume a much higher voting power for the shares to be issued (to account for potential future voting power), but would also be required to assume that the voting power of the outstanding shares remains the same. The Exchange believes that this approach would not be appropriate because the Exchange believes that it would be extremely unlikely that all shares of a new issuance will be held in record name by the same shareholder uninterrupted for ten years.<sup>82</sup> In addition, the Exchange believes that it would be even more unlikely for all shares of a new issuance to accrue votes up to the maximum amount while the shares outstanding remain static and do not accrue any additional votes. Given what the Exchange believes is the extremely low probability of this occurrence, the Exchange believes that requiring issuers to make these particular assumptions will result in LTSE Listings Issuers needing to obtain shareholder approval for transactions that would not be materially dilutive to existing shareholders nor would it be consistent with the objective of the rule, as it would effectively impose a Shareholder Approval Threshold of 2% instead of the 20% (if one were to calculate based solely on the Initial Voting Power of the shares at the time of their issuance). The Exchange does

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<sup>82</sup> As discussed above, supra note 8, the average holding period in 2015 was approximately eight months. Although the Exchange expects a longer average holding period for LTSE Listings Issuers, the Exchange believes that assuming a full ten-year holding period for all shareholders of LTSE Listings Issuers would not be reasonable.

not believe that imposing the burden of obtaining shareholder approval (including the monetary costs as well as time and uncertainty) would be justified for transactions that the Exchange believes are unlikely to be materially dilutive to the voting power of existing shareholders.

Proposed Rule 14A.412 would take what the Exchange believes to be a more reasonable and balanced approach that is aligned with the purpose of this requirement, while still taking into account the potential increased future voting power of new shares to be issued.<sup>83</sup> Specifically, for LTSE Listings Issuers that have been listed on LTSE Listings for at least five years, the numerator of the shareholder approval calculation would be determined by multiplying the number of shares to be issued by the product of the Initial Voting Power for such shares and a “Long-Term Voting Factor,” rather than just the Initial Voting Power of such shares. The Long-Term Voting Factor is intended to estimate the extent of the increase in voting power that the new shares to be issued are likely to obtain based on the percentage of increased voting power that existing issued shares have already obtained. This percentage would be applied to the new shares to be issued, thus estimating the likely voting power that the new shares would obtain over time.

The Long-Term Voting Factor would be calculated by dividing, as of the Shareholder Approval Calculation Date (defined below), the voting power outstanding attributable to the LTSE-Listings Issuer’s shares listed on LTSE Listings by the

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<sup>83</sup> The Exchange has included examples demonstrating how an LTSE Listings Issuer would conduct the shareholder approval calculations under proposed Rule 14A.412, as compared to alternative approaches considered, in Exhibit 3.

combined Initial Voting Power of those shares. This number will be equal to one if none of the LTSE Listings Issuer's shareholders have accrued additional voting power and will increase beyond one at a rate proportional to the number of additional votes attributable to LTSE Listings' long-term voting mechanics. In other words, the Long-Term Voting Factor represents the effect of long-term voting on the LTSE Listings Issuer's outstanding voting power as of the Shareholder Approval Calculation Date. For example, if an LTSE Listings Issuer has 1,000,000 shares outstanding on the Shareholder Approval Calculation Date, each with an Initial Voting Power of one vote per share, and as a result of increases in voting power over time, those shares have a total of 3,000,000 votes, the Long-Term Voting Factor would be 3.0. The formula would then assume that new shares to be issued would similarly achieve three votes per share over some period of time in the future. Given that the Exchange is unable to predict how many shareholders will actually elect to hold their shares in record ownership and thereby accrue additional voting power, or how long such shareholders would hold their shares, the Exchange believes that it is reasonable to look to the LTSE Listings Issuer's prior experience and apply that same experience to the new shares to be issued.

For LTSE Listings Issuers that have been listed on LTSE Listings for fewer than five years, the numerator in the shareholder approval calculation would be the greater of (i) the number of shares to be issued multiplied by the product of the Initial Voting Power for such shares and the Long-Term Voting Factor or (ii) the number of shares to be issued multiplied by the Initial Voting Power of such shares further multiplied by two. This effectively applies a minimum Long-Term Voting Factor of two to LTSE Listings Issuers that have been listed on LTSE for fewer than five years, even where the LTSE Listings

Issuer has an actual Long-Term Voting Factor of less than two. The Exchange believes that imposing this minimum multiple of two is appropriate because the actual Long-Term Voting Factor that these companies would have experienced during their short period of time of being public companies is likely to be lower than longer-listed issuers and may not be representative of the longer-term growth in voting power that the new shares may ultimately attain.<sup>84</sup>

As stated above, it is difficult to predict with any level of certainty how many shareholders will register their shares in record name and accrue additional voting power; however, the Exchange believes that applying a minimum multiple of two for companies that have been listed on LTSE for less than five years is reasonable and conservatively estimates the relative potential voting power of the new shares to be issued. This belief is informed by the Exchange's understanding of current shareholder turnover data, such as that in 2015 (albeit for non-LTSE Listings Issuers), investors held a stock for an average of about eight months.<sup>85</sup> A minimum Long-Term Voting Factor of two, however, the Exchange believes conservatively assumes a much longer average holding period. By way of example, an LTSE Listings Issuer would only have actually achieved a Long-

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<sup>84</sup> If the LTSE Listings category is approved, the Exchange will periodically assess whether a five year cut-off for applying a minimum Long-Term Voting Factor and the minimum Long-Term Voting Factor of two continue to be appropriate, or whether either should be modified based on its experience with LTSE Listings Issuers. For example, the Exchange will consider when the rate of growth of the voting power of an LTSE Listings Issuer's shares typically becomes relatively stable, and at what level. The Exchange notes that any such modification would be subject to the provisions of Section 19(b)(1) under the Act and Rule 19b-4 thereunder. See 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4.

<sup>85</sup> See *Turnover Ratio of Domestic Shares*, supra note 8.

Term Voting Factor of two, even after five years, if 20% of its outstanding shares were registered in the name of their shareholders on the books of the company in the first month following the issuer's IPO and such shares remained registered to those same investors without any interim transfers throughout the five-year period, and no other shares were added during that period.<sup>86</sup> Both the factor of two and the five-year threshold are being imposed on the basis of the Exchange's best judgment, which the Exchange believes balances the need to recognize that the shares' voting power can increase with the burden faced by companies seeking shareholder approval.

Proposed Rule 14A.412(b) would also clarify how to calculate the denominator in the shareholder approval calculation. IEX Rule 14.412(e)(2) currently provides that the denominator (voting power outstanding) refers to the "aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the Company's security holders for a vote." The calculation would be the same for LTSE Listings Issuers, except that proposed Rule 14A.412(b) would provide that this calculation must be made as of the Shareholder Approval Calculation Date, which would be the date on which an LTSE Listings Issuer enters into a binding agreement to conduct a transaction that may require shareholder approval under IEX Rule 14.412 (i.e., the acquisition of stock of assets of another

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<sup>86</sup> If the LTSE Listings category is approved, the Exchange will periodically assess whether the minimum Long-Term Voting Factor of two for LTSE Listings Issuers listed for less than five years should be modified based on its experience with LTSE Listings Issuers. The Exchange notes that any such modification would be subject to the provisions of Section 19(b)(1) under the Act and Rule 19b-4 thereunder. See 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4.

company or a private placement). The Exchange already expects Exchange-listed issuers to conduct this calculation as of this date;<sup>87</sup> however, because the shares of an LTSE Listings Issuer may accrue voting power over time, unlike the shares of other Exchange-listed companies, the Exchange believes it is important to explicitly specify in the LTSE Listings Rules the date on which this calculation must be performed.

The provisions described above are designed to clarify how the shareholder approval calculation under IEX Rule 14.412 would be conducted by an LTSE Listings Issuer. All other provisions of IEX Rule 14.412 would continue to apply, including, for example, the financial viability exception in IEX Rule 14.412(f).

(vii) Failure to Meet LTSE Listings Standards

Pursuant to IEX Rule 14.500(a), securities of an Exchange-listed company that do not meet the listing standards set forth in Chapters 14 and 16 of the Exchange's rulebook are subject to potential delisting from the Exchange. IEX Rule Series 14.500 sets forth procedures for the independent review, suspension and delisting of companies that fail to satisfy such standards. Proposed Rule 14A.500(a) would provide that a failure to meet the listing standards set forth in the LTSE Listings Rules would be treated as a failure to meet the listing standards set forth in Chapter 14 of the Exchange's rulebook for purposes of IEX Rule Series 14.500. As a result, the procedures set forth in the IEX Rule Series 14.500 would apply to any LTSE Listings Issuer that fails to comply with the listing

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<sup>87</sup> The Exchange understands that other national securities exchanges similarly expect their listed issuers to conduct the shareholder approval calculation under those exchanges' substantially similar rules as of this date.

standards in the LTSE Listings Rules, in addition to other applicable listing standards in the Exchange's rulebook.

IEX Rule 14.501(d) provides that if a company fails to satisfy the Exchange's listing standards, the type of deficiency at issue will determine whether the company will be immediately suspended or delisted, whether the company will have an opportunity to submit a plan to regain compliance or whether the company is entitled to an automatic cure or compliance period before a delisting determination is issued. Proposed Rule 14A.500(b) would provide that a failure to satisfy one or more of the LTSE Listings Rules will be treated as a deficiency for which a company may submit a plan to regain compliance in accordance with the Exchange's rules. Like all companies listed on the Exchange, LTSE Listings Issuers will be fully subject to IEX rules related to noncompliance and delisting, as set forth in Chapter 14 of the Exchange's rules.

Proposed Rule 14A.500(c) would provide that in the event that an LTSE Listings Issuer becomes subject to delisting from LTSE Listings for failure to satisfy one or more LTSE Listings Rules but is otherwise in compliance with all other applicable listing rules of the Exchange, the Exchange may permit such issuer to remain listed on the Exchange, provided that such issuer will cease to be listed on LTSE Listings and will cease to be an LTSE Listings Issuer.<sup>88</sup> In such cases, the Exchange would assess whether the issuer is in

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<sup>88</sup> Regardless of whether or not the Exchange permits an LTSE Listings Issuer to remain listed on the Exchange in such circumstances, the Exchange would expect the issuer to comply with any disclosure obligations relating to the receipt of a notification of deficiency or delisting determination as set forth in IEX Rule 14.501(c) and Item 3.01 of Form 8-K with respect to the termination of its listing on LTSE Listings.

compliance with the Exchange's continued listing criteria (other than continued listing criteria applicable solely to LTSE Listings Issuers); however, the issuer would not need to resubmit a listing application to remain listed on the Exchange.

(viii) Listing Fees for LTSE Listings Issuers

Proposed Rule Series 14A.600 is currently marked "Reserved." The Exchange intends to file a separate proposed rule change with the Commission under Section 19 of the Act that would address listing fees applicable to LTSE Listings Issuers.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>89</sup> and further the objectives of Section 6(b)(5) of the Act,<sup>90</sup> in particular, in that 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.

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 LTSE Listings Rules would remove

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<sup>89</sup> 15 U.S.C. 78f.

<sup>90</sup> 15 U.S.C. 78f(b)(5).

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 focus by companies and investors on the long-term. Specifically, the LTSE Listings Rules are intended to better enable companies to focus on long-term value creation, potentially enhancing opportunities for capital formation, and are also intended to foster transparency and effective corporate governance, which would benefit all investors, particularly those with a long-term focus. In addition, because listing on LTSE Listings and becoming subject to the LTSE Listings Rules is a voluntary election, the LTSE Listings Rules are not designed to permit unfair discrimination among issuers.

The following subsections provide additional detail on how the LTSE Listings Rules are designed to further the objectives of Section 6(b) of the Act.

(1) Board of Directors and Committee Requirements

As described in the Purpose section under “Board of Directors and Committee Requirements,” the proposed LTSE Listings Rules would impose additional obligations on the boards of directors and board committees of LTSE Listings Issuers. For example, the LTSE Listings Rules would require each LTSE Listings Issuer to establish a board committee dedicated to overseeing the issuer’s strategies for creating and sustaining long-term growth (*i.e.*, an LTSP Committee). Among other things, the LTSP Committee would be required to review and approve an LTSE Listings Issuer’s LTSP Disclosures, including the disclosure of its Long-Term Growth Strategy, on at least an annual basis. The Exchange believes that these requirements would protect investors and the public interest because it would help LTSE Listings Issuers focus on long-term goals. The LTSE Listings Rules would also require LTSE Listings Issuers to establish an independent

committee dedicated to selecting or recommending qualified director nominees (i.e., a nominating/corporate governance committee). In addition, the LTSE Listings Rules would require the LTSP Committee, the nominating/corporate governance committee, the compensation committee and the audit committee to report regularly to the board of directors and would require that the charters of such committees be made available on or through the LTSE Listings Issuer’s website. The Exchange believes that these requirements are consistent with the protection of investors and the public interest because they are designed to support the governance structure objectives of LTSE Listings.

(2) Long-Term Strategy and Product Disclosures

As described in the Purpose section under “Long-Term Strategy and Product Disclosures,” the proposed LTSE Listings Rules would require LTSE Listings Issuers to provide investors with LTSP Disclosures, which are supplemental disclosures regarding an LTSE Listings Issuer’s long-term strategy and products. Specifically, the LTSP Disclosures would include disclosures relating to an LTSE Listings Issuer’s Long-Term Growth Strategy, Buybacks, Human Capital Investment and research and development. These disclosures would be in addition to the disclosures required under the Act, the Commission’s rules thereunder and the Exchange’s other rules. The Exchange believes that the LTSP Disclosures would be consistent with the aims of the existing disclosure requirements of the Act—to ensure that investors receive full and accurate information so that they can make informed investment decisions—and are thereby consistent with the protection of investors and the public interest. Specifically, the Exchange believes that the LTSP Disclosure requirements would ensure that investors receive sufficient

information to evaluate a company's progress toward meeting long-term goals. Although only LTSE Listings Issuers would be subject to these requirements, these requirements would not unfairly discriminate among issuers as only those companies electing to be subject to the LTSE Listings Rules would be subject to these requirements.

(3) Long-Term Alignment of Executive Compensation

As described in the Purpose section under "Long-Term Alignment of Executive Compensation," the LTSE Listings Rules would require that an LTSE Listings Issuer's compensation committee adopt a set of executive compensation guidelines applicable to Executive Officers that are designed to link executive compensation to the long-term value of the LTSE Listings Issuer. The Exchange believes that these requirements are consistent with the protection of investors and the public interest, consistent with Section 6(b)(5) of the Act, because they would help ensure that Executive Officers are incentivized to take actions that would enhance the long-term growth of an LTSE Listings Issuer, rather than short-term results. In addition, the Exchange believes that requiring a stronger link between a company's long-term performance and its executive compensation is designed to prevent fraudulent and manipulative acts and practices, by incentivizing executives to act in the long-term interest of LTSE Listings Issuers and limiting the extent to which executives could personally profit from efforts to effect short-term performance.

(4) Long-Term Shareholder Voting Structure

As described in the Purpose section under "Long-Term Shareholder Voting Structure," the LTSE Listings Rules would require that LTSE Listings Issuers maintain

voting rights provisions in their corporate organizational documents that provide shareholders with the ability, at the shareholders' option, to accrue additional voting power over time. The Exchange believes that these requirements are consistent with the protection of investors and the public interest because they would provide a mechanism by which long-term shareholders can have greater influence in corporate governance. The Exchange believes that long-term shareholders are more likely than short-term investors to exercise their governance rights in a manner that prioritizes long-term growth over short-term results, and thus it is in the public interest and furthers the protection of investors for longer-term investors to have a greater role in corporate governance. In this regard, the Commission has noted that, "when the interests of long-term investors and short-term traders conflict ... its clear responsibility is to uphold the interests of long-term investors."<sup>91</sup> Further, the Exchange believes that, consistent with Section 6(b)(5) of the Act, the long-term voting rights provisions would not be unfairly discriminatory, as any shareholder of an LTSE Listings Issuer would have equal opportunity to elect to move their shares into registered form and accrue additional voting rights. Further, by requiring that the length of a shareholder's ownership be consistently measured through the shareholder's record ownership on an LTSE Listings Issuer's books, transferred to and from "street name" through a DRP, the Exchange believes that the system will foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities,

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<sup>91</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37500 (June 29, 2005).

consistent with Section 6(b)(5) of the Act.

(5) Other Long-Term Requirements

As described in the Purpose section under “Other Long-Term Requirements,” the LTSE Listings Rules would include certain other rules designed to encourage LTSE Listings Issuers to focus on long-term value creation. For example, the LTSE Listings Rules would provide that LTSE Listings Issuers are generally prohibited from providing Earnings Guidance more frequently than annually. The Exchange believes that this requirement is consistent with the protection of investors and the public interest by enhancing the ability of companies to withstand short-term pressures and focus on long-term growth, and is designed to prevent fraudulent and manipulative acts and practices, such as the risk that a company could take actions to artificially meet prior Earnings Guidance.

The LTSE Listings Rules would also require that each LTSE Listings Issuer develop and publish a policy regarding an LTSE Listings Issuer’s impact on the environment and community, and a policy explaining an LTSE Listings Issuer’s approach to diversity. The Exchange believes that this requirement is consistent with the protection of investors and the public interest by ensuring that companies consider their impact on various stakeholders and the sustainability of their business.

The LTSE Listings Rules would require LTSE Listings Issuers to have and maintain a publicly accessible website. Documents required to be posted on this website under the LTSE Listings Rules would be required to be made available in a printable version in the English language. The Exchange believes that these requirements are consistent with the protection of investors and the public interest by ensuring that

investors and the public have access to the disclosures and other documents required by the LTSE Listings Rules.

The LTSE Listings Rules would require LTSE Listings Issuers to make certain certifications to the Exchange. Specifically, LTSE Listings Issuers would be required to certify, at or before the time of listing, that all applicable listing criteria, including listing criteria under the LTSE Listings Rules, have been satisfied. In addition, the LTSE Listings Rules would require the CEO of each LTSE Listings Issuer to certify annually to the Exchange that the LTSE Listings Issuer is in compliance with proposed Rule Series 14A.400, which would contain the corporate governance requirements of the LTSE Listings Rules, qualifying the certification to the extent necessary. The Exchange believes that these certification requirements are consistent with the protection of investors and the public interest and are designed to prevent fraudulent and manipulative acts and practices. As discussed in the Purpose section, given the unique nature of the LTSE Listings Rules, the Exchange believes that adding an annual certification requirement for LTSE Listings Issuers will assist the CEO and senior management of such issuers in ensuring compliance with LTSE Listings corporate governance requirements on an ongoing basis.

(6) Proposed Rules Clarifying Application of Existing Exchange Rules

As described in the Purpose section under “Proposed Rules Clarifying Application of Existing Exchange Rules,” the LTSE Listings Rules would include a number of rules that would clarify the application of existing Exchange rules to LTSE Listings Issuers. In general, these rules would provide that LTSE Listings Issuers must comply with both the LTSE Listings Rules as well as all other applicable rules of the

Exchange. However, these rules would also explain any deviations from this general principle. For example, although the Exchange maintains listing rules relevant for various types of securities, including American Depositary Receipts, preferred stock, rights and warrants, among others, the LTSE Listings Rules would clarify that only common equity securities would be eligible for listing on LTSE Listings. Similarly, although the Exchange maintains a number of exemptions from certain corporate governance requirements for certain types of issuers (e.g., Foreign Private Issuers), certain exemptions would not be available for LTSE Listings Issuers. The Exchange believes that these rules are consistent with protecting investors and the public interest because they would provide transparency to issuers and investors on how the Exchange's existing rules would apply to an LTSE Listings Issuer. Although these rules discriminate between issuers listed on LTSE Listings and other issuers listed on the Exchange, as well as between the type of security listed, the Exchange believes that the rules are not unfairly discriminatory, as companies are free to elect whether to list on LTSE Listings and be subject to its additional requirements.

Another example of a proposed rule that would clarify the application of existing Exchange rules to LTSE Listings Issuers is proposed Rule 14A.412, which would clarify how an LTSE Listings Issuer would conduct the shareholder approval calculation in IEX Rule 14.412. The Exchange believes that this proposed Rule would further the objectives of Section 6(b)(5) of the Act because it would ensure that the long-term voting mechanics of the LTSE Listings Rules are taken into account when conducting this calculation. As discussed in the Purpose section, the Exchange believes that the proposed approach appropriately balances the reasonably likely potential dilution to existing shareholders

without imposing a disparately burdensome shareholder approval requirement on LTSE Listings Issuers. The fact that shares may accrue voting power over time means that shares may be issued that have voting power that is less than the Shareholder Approval Threshold at the time of issuance, but potentially greater than the Shareholder Approval Threshold after a certain period of time. This would increase the dilution to the shareholders that held shares prior to that issuance. Although such existing shareholders would also have the ability to accrue additional voting power, to protect such shareholders and promote just and equitable principles of trade, proposed Rule 14A.412 would require LTSE Listings Issuers to take into account the likely voting power growth that the potential new shares would obtain over time (i.e., the Long-Term Voting Factor) when determining whether an issuance covered by IEX Rule 14.412 would require shareholder approval.

For purposes of proposed Rule 14A.412, the assumed growth in voting power for the potential new shares is equal to the actual growth in voting power that the existing shares have obtained; however, shares of relatively new LTSE Listings Issuers may not have had time to accrue additional voting power. In other words, the Long-Term Voting Factor may be lower than what it would otherwise be for an LTSE-Listings Issuer that has been listed on LTSE Listings for a longer period of time. As a result, proposed Rule 14A.412 provides that LTSE Listings Issuers that have been listed for fewer than five years must assume a minimum Long-Term Voting Factor of two.<sup>92</sup> The Exchange

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<sup>92</sup> As noted in the Purpose section, if the LTSE Listings category is approved, the Exchange will periodically assess whether the minimum Long-Term Voting

believes that this provision further protects investors and helps ensure that the shareholder approval calculation in IEX Rule 14.412 appropriately balances the interests of existing shareholders in having a vote on potentially dilutive share issuances with the burden of holding a shareholder meeting under circumstances when material dilution is unlikely. The Exchange believes that this approach is consistent with the policy objectives of IEX Rule 14.412 as discussed in the Purpose section.

Proposed Rule 14A.500(c) would provide that in the event that an LTSE Listings Issuer becomes subject to delisting from LTSE Listings for failure to satisfy one or more LTSE Listings Rules but is otherwise in compliance with all other applicable listing rules of the Exchange, the Exchange may permit such issuer to remain listed on the Exchange, provided that such issuer will cease to be listed on LTSE Listings and will cease to be an LTSE Listings Issuer.<sup>93</sup> The Exchange would assess whether such an issuer is in compliance with the Exchange's continued listing criteria (other than continued listing criteria applicable solely to LTSE Listings Issuers), and this provision would allow such an issuer to remain listed on the Exchange without going through the process of

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Factor of two should be modified based on its experience with LTSE Listings Issuers. The Exchange notes that any such modification would be subject to the provisions of Section 19(b)(1) under the Act and Rule 19b-4 thereunder. See 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4.

<sup>93</sup> The Exchange believes that this provision is similar to rules of other national securities exchanges that permit an issuer receiving a delisting determination to transfer to a separate segment of such exchange, subject to compliance with the continued listing standards of the separate segment. See Nasdaq FAQ Identification No. 474 (7/31/2012). Accordingly, the Exchange does not believe that this aspect of the LTSE Listings Rules raises any new or novel issues and is consistent with requirements of Section 6(b)(5) of the Act.

reapplying for an Exchange listing, which the Exchange believes would be disruptive to the issuer and its investors. As a result, the Exchange believes that this proposed rule would further the objectives of Section 6(b)(5) of the Act by, among other things, helping to remove impediments to and perfect the mechanism of a free and open market.

4. 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 Act<sup>94</sup> and consistent with Section 6(b)(8) of the Act<sup>95</sup> because it will provide issuers with an alternative with a differentiated offering as compared to the other listing rules existing on other national securities exchanges and the Exchange itself. Moreover, as a new listing venue, the Exchange expects to face intense competition from existing exchanges. Consequently, the degree to which a new listing category on the Exchange could impose any burden on intermarket competition is extremely limited, and the Exchange does not believe that such listing category would impose any burden on competing venues that is not necessary or appropriate in furtherance of the purposes of the Act. In addition, there is no barrier to other exchanges adopting similar listing standards. To the extent LTSE Listings is successful in attracting issuers to the list on the

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<sup>94</sup> 15 U.S.C. 78k-1(a)(1)(C)(ii).

<sup>95</sup> 15 U.S.C. 78f(b)(8).

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 proposed rule change will result in any burden on intramarket competition since becoming subject to the supplemental standards in the LTSE Listings Rules is completely voluntary. Issuers can elect to list on the Exchange without listing on LTSE Listings, or can elect to become subject to the heightened standards of the LTSE Listings Rules. The Commission and Congress have in other contexts recognized that companies may elect to be subject to greater compliance obligations than strictly required, or elect not to rely on exemptions that may otherwise be available. For example, in adopting the Jumpstart Our Business Startups Act,<sup>96</sup> Congress provided that emerging growth companies could, but were not required to, elect to rely on exemptions from various securities law requirements.<sup>97</sup> Similarly, the Commission provides that classes of companies, such as Smaller Reporting Companies, may but are not required to provide particular disclosures.<sup>98</sup> Similarly, other national securities exchanges have adopted categories for listed companies that elect to become

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<sup>96</sup> Pub. L. No. 112-106, 126 Stat. 306 (2012).

<sup>97</sup> For example, emerging growth companies may, but “need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective...” See Securities Act Section 7(a)(2)(A); 15 U.S.C. 77g(a)(2)(A).

<sup>98</sup> See, e.g., Regulation S-K, Item 10(f); 17 CFR 229.10(f) (“[a] smaller reporting company may comply with either the requirements applicable to smaller reporting companies or the requirements applicable to other companies for each item, unless the requirements for smaller reporting companies specify that smaller reporting companies must comply with the smaller reporting company requirements”).

subject to higher standards than other companies listed on such national securities exchange.<sup>99</sup>

The Exchange also does not believe that the proposal will impose any burden on competition between LTSE Listings Issuers that is not necessary or appropriate in furtherance of the purposes of the Act because all companies electing to list on LTSE Listings will be subject to the same standards. Furthermore, where appropriate, the LTSE Listings Rules are designed to provide LTSE Listings Issuers with flexibility to implement the minimum standards contained in the LTSE Listings Rules in ways that are best suited for that issuer's business.

Finally, the Exchange does not believe that the transfer agent certification requirement under proposed Rule 14A.413(b)(5) will impose a burden on competition with respect to transfer agents. While not all transfer agents will be able to implement the required software or other systems or processes, any transfer agent can choose to invest the resources necessary to implement such software or other systems or processes. Moreover, as noted above, as a new listing venue, the Exchange expects to face intense competition from existing exchanges. Consequently, the degree to which a new listing category on the Exchange could impose any burden on competition among transfer agents is extremely limited, and the Exchange does not believe that such listing category would impose any burden on transfer agents that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>99</sup> See generally Nasdaq Rule 5000 series (containing more stringent listing standards for issuers listed on the "Nasdaq Global Select Market" as compared to those listed on the "Nasdaq Global Market" or the "Nasdaq Capital Market").

5. 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.

6. Extension of Time Period for Commission Action

IEX does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>100</sup>

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on the Rules of Another Self-Regulatory Organization or of the Commission

As described above, certain provisions of the proposed rule change are based on the rules of other national securities exchanges.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 3 – Examples Applying the Proposed Shareholder Approval Calculations

Exhibit 5 – Text of Proposed Rule Change

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<sup>100</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34 -     ); File No. SR-IEX-2018-06)

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing of Proposed Rule Change to Establish a New Optional Listing Category on the Exchange, LTSE Listings on IEX, which Provides a Differentiated Choice for Issuers and Investors that Prefer Listing Standards Explicitly Designed to Promote Long-Term Value Creation.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on (date), the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III 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

Pursuant to the provisions of Section 19(b)(1) under the Act of 1934,<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> IEX is filing with the Commission a proposed rule change to establish a new optional listing category on the Exchange, which provides a differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation.

The text of the proposed rule change is available at the Exchange’s website at

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

www.iextrading.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 the 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 of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(1) Overview

On June 17, 2016, the Commission granted the Exchange's application for registration as a national securities exchange under Section 6 of the Act,<sup>6</sup> including approval of rules applicable to the qualification, listing and delisting of companies on the Exchange. The Exchange has since adopted additional rules to create a listing venue to provide a new alternative for companies seeking to list their securities for trading on a registered national securities exchange.<sup>7</sup>

The Exchange is proposing to adopt rules to facilitate the creation of a new

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 80453 (April 13, 2017), 82 FR 18507 (April 19, 2017); Securities Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017); Securities Exchange Act Release No. 80905 (June 12, 2017), 82 FR 27748 (June 16, 2017).

optional listing category on the Exchange for common equity securities, referred to as the “LTSE Listings on IEX” or “LTSE Listings.” The proposed rules for LTSE Listings, to be contained in new Chapter 14A of the Exchange’s rules (the “LTSE Listings Rules”), were initially developed by LTSE Holdings, Inc. (together with its affiliates, “LTSE”), and provide a differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation. The Exchange understands that LTSE anticipates separately registering a subsidiary as a national securities exchange in the future, but has entered into an arrangement with the Exchange in order to make the LTSE Listings Rules available to potential interested companies in advance of its own subsidiary’s registration as a national securities exchange.

Becoming subject to the LTSE Listings Rules would be an optional election. Companies listed on the Exchange that do not elect to be subject to the LTSE Listings Rules would not be required to comply with Chapter 14A. However, companies that list on LTSE Listings (“LTSE Listings Issuers”) would be subject to the LTSE Listings Rules, as well as the quantitative listing requirements set forth in IEX Rule Series 14.300, and all other applicable listing rules of the Exchange set forth in Chapter 14 of the IEX Rulebook, except as they may be specifically modified for LTSE Listings Issuers.

At this time, the Exchange is limiting the availability of LTSE Listings to companies seeking to list on LTSE Listings concurrently with their initial public offering (whether listing on LTSE Listings only or dually listing on LTSE Listings and another national securities exchange). The Exchange would not permit issuers already listed on another national securities exchange to transfer to LTSE Listings.

The Exchange believes that the new LTSE Listings category will introduce a

differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation, potentially enhancing opportunities for capital formation, as well as contributing to greater competition for listings among national securities exchanges. At the same time, as LTSE Listings will be an entirely optional listing category, the introduction of LTSE Listings will not impact companies that elect to list on the Exchange under its existing listing rules.

(2) Background

(A) Concerns about Short-Termism in the Markets

Many academics, commentators, market participants,<sup>8</sup> as well as certain current

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<sup>8</sup> 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%20capitalism/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](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.”); Travis Baratko, A Times-Mirror Conversation With Sen. Mark Warner, *The Loudoun Times-Mirror* (July 27, 2015), available at

and former members of the Commission<sup>9</sup> have voiced concerns regarding so-called “short-termism” and the risk that some investors’ 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.

Commenters have pointed to the dramatically declining average amount of time that an investor holds a stock as evidence of a greater short-term focus.<sup>10</sup> Share turnover

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[http://www.loudountimes.com/news/article/a\\_loudoun\\_times\\_mirror\\_conversation\\_with\\_sen.\\_mark\\_warner432](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.”).

<sup>9</sup> See, e.g., Jay Clayton, Hearing before the Senate Banking Committee on the Nomination of Jay Clayton, of New York, to be a Member of the Securities and Exchange Commission (March 23, 2017), [available at](https://www.gpo.gov/fdsys/pkg/CHRG-115shrg24998/html/CHRG-115shrg24998.htm) <https://www.gpo.gov/fdsys/pkg/CHRG-115shrg24998/html/CHRG-115shrg24998.htm> (“In my experience, certain companies view the operational and other pressures inherent in quarterly earnings as costly, including because they detract from long-term planning and strategic initiatives”); Commissioner Daniel M. Gallagher, Activism, Short-Termism, and the SEC: Remarks at the 21st Annual Stanford Directors’ College (June 23, 2015), [available at](https://www.sec.gov/news/speech/activism-short-termism-and-the-sec.html) <https://www.sec.gov/news/speech/activism-short-termism-and-the-sec.html> (“[T]here seems to be a predominance of short-term thinking at the expense of long-term investing. Some activists are swooping in, making a lot of noise, and demanding one of a number of ways to drive a short-term pop in value: spinning off a profitable division, beginning a share buy-back program, or slashing capital expenditures or research and development expenses.”); Commissioner Kara M. Stein, Toward Healthy Companies and a Stronger Economy: Remarks to the U.S. Treasury Department’s Corporate Women in Finance Symposium (April 30, 2015), [available at](https://www.sec.gov/news/speech/stein-toward-healthy-companies.html) <https://www.sec.gov/news/speech/stein-toward-healthy-companies.html> (“The heart of the argument is that short-term pressures from certain investors, and markets in general, compel companies to look narrowly at the short-term. As a result, companies become overly focused on meeting quarterly earnings targets... To meet these demands, companies have to cut back on capital expenditures, research and development, workforce training, and other investments that lead to new innovation, higher productivity, and future growth.”).

<sup>10</sup> See, e.g., Dominic Barton, Capitalism for the Long Term, Harvard Business Review (March 2011), [available at](https://hbr.org/2011/03/capitalism-for-the-long-term) <https://hbr.org/2011/03/capitalism-for-the-long-term>; Tragedy of the Horizon Project, The Long and Winding Road: How Long-Only Equity Managers Turn Over Their Portfolios Every 1.7 Years (February 2017), [available at](http://www.tragedyofthehorizon.com/The-Long-And-Winding-Road.pdf) <http://www.tragedyofthehorizon.com/The-Long-And-Winding-Road.pdf>; Martin Cremers, Ankur Pareek and Zacharias Sautner, Short-Term Investors, Long-Term Investments, and Firm Value (March 14, 2017), [available at](https://ssrn.com/abstract=2720248) <https://ssrn.com/abstract=2720248>; Alana Semuels, How to Stop Short-Term Thinking at America’s Companies, The Atlantic (December 30, 2016), [available at](#)

data suggests that investors held stocks for an average of about eight years in 1960, compared with about eight months in 2015.<sup>11</sup> While a great deal of this turnover may be attributable to the growth of high-frequency trading strategies (which accounted for about 50% of all U.S. trade volume in 2016),<sup>12</sup> more traditional institutional investors have shown reduced holding periods as well. A 2013 survey showed that 96% of institutional investors executed round-trip trades that lasted less than one month, with 23% of their trading volume relating to trades that are held for less than three months.<sup>13</sup>

Some commenters believe that current public market dynamics subject public companies to intense pressure to meet quarterly performance targets, resulting in negative consequences for long-term value creation.<sup>14</sup> One study found that 80% of chief financial

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<https://www.theatlantic.com/business/archive/2016/12/short-term-thinking/511874/>; Roger L. Martin, Yes, Short-Termism Really is a Problem, Harvard Business Review (October 9, 2015), [available at https://hbr.org/2015/10/yes-short-termism-really-is-a-problem](https://hbr.org/2015/10/yes-short-termism-really-is-a-problem).

<sup>11</sup> New York Stock Exchange, Annual Reported Volume, Turnover Rate, Reported Trades (2004), [available at http://www.nyxdata.com/nysedata/asp/factbook/viewer\\_edition.asp?mode=table&key=2206&category=4](http://www.nyxdata.com/nysedata/asp/factbook/viewer_edition.asp?mode=table&key=2206&category=4); World Bank, Stocks Traded, Turnover Ratio of Domestic Shares (2015), [available at https://data.worldbank.org/indicator/CM.MKT.TRNR?end=2015&locations=US&start=1975](https://data.worldbank.org/indicator/CM.MKT.TRNR?end=2015&locations=US&start=1975) (hereinafter “Turnover Ratio of Domestic Shares”).

<sup>12</sup> Ana Avramovic, Credit Suisse Market Commentary: We’re All High-Frequency Traders Now (March 15, 2017), [available at https://edge.credit-suisse.com/edge/Public/Bulletin/Servefile.aspx?FileID=28410&m=-1290757752](https://edge.credit-suisse.com/edge/Public/Bulletin/Servefile.aspx?FileID=28410&m=-1290757752).

<sup>13</sup> Bidisha Chakrabarty, Pamela C. Moulton and Charles Trzcinka, Institutional Holding Periods (April 29, 2013), [available at https://scholarship.sha.cornell.edu/cgi/viewcontent.cgi?article=1001&context=conf](https://scholarship.sha.cornell.edu/cgi/viewcontent.cgi?article=1001&context=conf).

<sup>14</sup> McKinsey Global Institute, Measuring the Economic Impact of Short-Termism (February 2017), [available at http://www.mckinsey.com/~media/mckinsey/global%20themes/long%20term%20capitalism/where%20companies%20with%20a%20long%20term%20view%20outperform%20their%20peers/measuring-the-economic-impact-of-short-termism.ashx](http://www.mckinsey.com/~media/mckinsey/global%20themes/long%20term%20capitalism/where%20companies%20with%20a%20long%20term%20view%20outperform%20their%20peers/measuring-the-economic-impact-of-short-termism.ashx). C.f. James B. Stewart, Amazon Says Long Term And Means It, N.Y. Times (December 16, 2011) (noting Amazon.com’s willingness to invest in long-term initiatives notwithstanding the impact on its short-term quarterly earnings).

officers of public companies acknowledge that they would forego long-term value creation initiatives like research and development in order to avoid missing quarterly targets.<sup>15</sup> Further, a 2013 study found that companies projected to just miss their earnings per share (“EPS”) forecasts by a few cents are significantly more likely to repurchase shares than companies that beat their EPS forecasts by a few cents, suggesting efforts to increase EPS through financial engineering rather than growth.<sup>16</sup> At the same time, this study found that in the calendar year following repurchases, these same companies decreased their number of employees, investment in research and development, and capital expenditures, which the study authors found suggests that these companies may have been willing to forego investment in long-term growth in order to meet short-term financial targets.<sup>17</sup>

The greater focus on short-term financial performance noted by these commenters also coincides with a reduction in the number of private companies seeking to undertake initial public offerings (“IPOs”) and list their shares on the U.S. public markets. From 2001 through 2016, the U.S. averaged approximately one-third of the IPOs per year than it did each year between 1998 and 2000.<sup>18</sup> Calendar year 2016 had the fewest number of

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<sup>15</sup> John R. Graham, Campbell R. Harvey, Shiva Rajgopal, Value Destruction and Financial Reporting Decisions (September 6, 2006), available at [https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/12924/Rajgopal\\_value.pdf](https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/12924/Rajgopal_value.pdf) (“80% of survey participants report that they would decrease discretionary spending on R&D, advertising and maintenance to meet an earnings target”).

<sup>16</sup> Heitor Almeida, Vyacheslav Fos, Mathias Kronlund, The Real Effects of Share Repurchases (June 8, 2015), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2276156](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2276156).

<sup>17</sup> Id.

<sup>18</sup> Jay R. Ritter, Initial Public Offerings: Updated Statistics (August 8, 2017), available at <https://site.warrington.ufl.edu/ritter/files/2017/08/IPOs2016Statistics.pdf>.

IPOs since the financial crisis years of 2008 and 2009,<sup>19</sup> although there was a relative increase in 2017.<sup>20</sup> The total number of listed companies in the United States also fell by almost 50% in the twenty year period from 1996 through 2016, down from over 8,000 companies listed on U.S. exchanges in 1996 to 4,333 in June of 2016.<sup>21</sup>

This decline is driven by fewer companies going public, existing public companies going private or merging with other public companies, and those companies that undertake an IPO doing so at a much later stage. Between 1980 and 2000, companies that went public typically did so about 7.6 years after founding.<sup>22</sup> Since then, that timespan has grown longer; between 2001 and 2016, the average age of a company at its IPO was nearly 12 years.<sup>23</sup>

The Exchange believes that these trends have significant consequences for companies, investors, and the economy as a whole. A 2011 report by the IPO Task Force reported that “up to 22 million jobs may have been lost” as a result of the decline in IPOs.<sup>24</sup> The trend toward companies staying private also limits the investment

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<sup>19</sup> Id.

<sup>20</sup> Ernst & Young, Global IPO Trends: Q3 2017 (2017), available at [http://www.ey.com/Publication/vwLUAssets/ey-global-ipo-trends-q3-2017/\\$FILE/ey-global-ipo-trends-q3-2017.pdf](http://www.ey.com/Publication/vwLUAssets/ey-global-ipo-trends-q3-2017/$FILE/ey-global-ipo-trends-q3-2017.pdf) (noting 111 IPOs in the U.S. through the third quarter of 2017, a 35% increase year-over-year).

<sup>21</sup> See U.S. Dept. of the Treasury, A Financial System that Creates Economic Opportunities: Capital Markets at p. 21 (October 2017), available at <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>

<sup>22</sup> Ritter, supra note 18.

<sup>23</sup> Id.

<sup>24</sup> IPO Task Force, Rebuilding the IPO On-Ramp (October 20, 2011), available at [https://www.sec.gov/info/smallbus/acsec/rebuilding\\_the\\_ipo\\_on-ramp.pdf](https://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf).

opportunities for ordinary investors,<sup>25</sup> as most retail investors are not “accredited investors” eligible to invest in private placements pursuant to Rule 506 of Regulation D<sup>26</sup> under the Securities Act of 1933.<sup>27</sup> Although institutional investors may provide the investment capital that these companies need, some have voiced concerns that private markets lack the transparency, liquidity, price discovery, and protections of the public marketplace.<sup>28</sup>

Although there are a number of potential causes for the decline in the number of IPOs and the number of public companies,<sup>29</sup> some commenters believe that the short-

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<sup>25</sup> See U.S. Dept. of the Treasury, A Financial System that Creates Economic Opportunities: Capital Markets at p. 27 (October 2017), available at <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf> (“If a company decides not to go public and instead raises capital in the private market or as an exempt offering, it could be subject to investor qualification requirements and/or offering limitations. This could result in the average investor being deprived of an opportunity to consider investing in that enterprise.”).

<sup>26</sup> 17 CFR 230.506.

<sup>27</sup> 15 U.S.C. 77a *et seq.*

<sup>28</sup> Commissioner Kara M. Stein, Lighting our Capital Markets (July 11, 2017), available at <https://www.sec.gov/news/speech/stein-lighting-our-capital-markets-071117>.

<sup>29</sup> Jay R. Ritter, Xiaohui Gao Bakshi, Zhu, Zhongyan, Where Have All the IPOs Gone? (August 26, 2013), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1954788](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1954788) (hypothesizing that economies of scope make it more attractive for companies to sell themselves to a larger organization than remain independent); Elisabeth de Fontenay, The Deregulation of Private Capital and the Decline of the Public Company, Duke Law School Public Law & Legal Theory Series No. 2017-33 (April 11, 2017), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2951158](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2951158) (suggesting that the easing of regulation on private securities offerings and transactions have decreased the incentive for firms to become public); PwC, Considering an IPO? The costs of going and being public may surprise you (September 2012), available at <http://www.pwc.com/us/en/deals/publications/assets/pwc-cost-of-ipo.pdf> (discussing cost of initial IPO and remaining public); Michael J. Mauboussin, The Incredible Shrinking Universe of Stocks, Credit Suisse Global Financial Strategies (March 22, 2017), available at [https://research-doc.credit-suisse.com/docView?language=ENG&format=PDF&sourceid=em&document\\_id=1072753661&serialid=h%2B%2FwLdU%2FTIaitAx1mnmfYsPRAuTFRGdTSF4HZIvTkA%3](https://research-doc.credit-suisse.com/docView?language=ENG&format=PDF&sourceid=em&document_id=1072753661&serialid=h%2B%2FwLdU%2FTIaitAx1mnmfYsPRAuTFRGdTSF4HZIvTkA%3)

term pressures placed on public companies have discouraged some newer companies from conducting initial public offerings,<sup>30</sup> and have led others to go private.<sup>31</sup> Indeed, even when newer companies do undertake an IPO, in recent years many have sought to do so in a way that limits the public market's short-term pressures, by retaining for the founders much of the voting control.<sup>32</sup>

(B) Listing Standards for Long-Term Focused Companies and Investors

The Exchange believes that companies should be able to maintain a public listing on an exchange that provides a differentiated choice for issuers and investors that prefer

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D (suggesting causes including regulatory compliance costs, increased merger and acquisition activity, and availability of late-stage venture capital).

<sup>30</sup> 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 public is shareholders’ sometimes excessive focus on short-term stock price fluctuations”).

<sup>31</sup> See, e.g., 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”).

<sup>32</sup> Wall Street Journal Business Blog, *The Big Number* (August 17, 2015), available at <https://www.wsj.com/articles/the-big-number-1439865699>; Ken Bertsch, *Snap and the Rise of No-Vote Common Shares*, Harvard Law School Forum on Corporate Governance and Financial Regulation (May 26, 2017), available at <https://corpgov.law.harvard.edu/2017/05/26/snap-and-the-rise-of-no-vote-common-shares>.

listing standards explicitly designed to promote long-term value creation. While all companies that may list on the Exchange can focus on long-term value creation, providing a listing category with listing rules that address some of the concerns regarding short-termism could encourage greater participation in the public markets by long-term focused companies and investors, potentially increasing the number of companies willing to become public.

The Exchange understands that LTSE engaged in a multiyear effort to develop the LTSE Listings Rules based on its analysis of academic research, market experience, and input from a wide variety of long-term focused stakeholders. The LTSE Listings Rules are designed to promote the interests of companies that seek to focus on long-term value creation as well as the transparency and governance concerns of long-term focused investors. LTSE's analysis found that, although individual stakeholders may favor or disfavor particular LTSE Listings Rules, long-term focused companies and investors' concerns with particular LTSE Listings Rules were offset by the benefits they saw from the package of the LTSE Listings Rules as a whole.

The Exchange acknowledges that many, if not all, of the proposed requirements contained in the LTSE Listings Rules could be undertaken voluntarily by any company even in the absence of the LTSE Listings category. However, the Exchange understands that many long-term focused investors indicated to LTSE that they would view a company that affirmatively chose to list on an exchange (or listing category thereof) that required compliance with these rules, therefore subjecting itself to compliance as a regulatory condition to continued listing, as demonstrating a greater commitment to long-term focus than one that voluntarily undertook to abide by similar practices, but could

readily choose to change its practices thereafter. In addition, because an exchange, as a self-regulatory organization, is required to monitor and enforce compliance with its rules,<sup>33</sup> the Exchange believes that long-term focused investors appreciate and have confidence in the oversight that a national securities exchange provides to ensure that a company complies with its exchange listing obligations. Similarly, the Exchange understands that many long-term focused companies believe that they would be better able to withstand short-term pressures if they were subject to rules that explicitly required them to disclose actions promoting a long-term focus. Further, rather than each company acting independently, requiring investors to analyze each company's governance separately, investors familiar with LTSE Listings would quickly know the rules that apply to an LTSE Listings Issuer.

The Exchange has entered into an arrangement with LTSE to authorize the Exchange to make the LTSE Listings Rules available as a listing category of the Exchange. Through extensive discussions, LTSE has provided the Exchange with background information on the purpose of each of the LTSE Listings Rules, with which the Exchange agrees. As a result, statements herein that describe the Exchange's belief are informed by information provided by LTSE. Although the LTSE Listings Rules were developed by LTSE, the Exchange will retain full self-regulatory responsibility for determining initial and continuing compliance with the Exchange's listing standards, including for those companies that elect to be subject to the LTSE Listings Rules. In conducting its LTSE Listings business, IEX will retain, as its agents, a small number of staff that also are employed by LTSE (the "LTSE Listings Agents"), but will not receive

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<sup>33</sup> See 15 U.S.C. 78s(g)(1)(A).

regulatory services from LTSE itself. The sole responsibility of LTSE Listings Agents will be to provide IEX with expertise in interpreting the LTSE Listings Rules and assistance in conducting the LTSE Listings business, and their involvement will not extend to other matters within the Exchange's jurisdiction. The LTSE Listings Agents will be subject to the Exchange's oversight and regulatory authority as the responsible self-regulatory organization.<sup>34</sup>

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<sup>34</sup> Notwithstanding the services provided by the LTSE Listings Agents to the Exchange, all actions taken by the Exchange will ultimately be based on the Exchange's determination that the action is appropriate and consistent with the Act, the Commission's rules thereunder and the Exchange's rules. Pursuant to the Exchange's retention of LTSE Listings Agents, the LTSE Listings Agents will provide certain advisory, marketing, public communications, and sales services to IEX in connection with LTSE Listings. For example, LTSE Listings Agents will evaluate issuers seeking to list on the Exchange under the LTSE Listings Rules and will assist in monitoring LTSE Listings Issuers for compliance with the LTSE Listing Rules. The Exchange expects that the LTSE Chief Regulatory Officer will be a LTSE Listings Agent (and other LTSE regulatory personnel that do not have direct involvement in LTSE's commercial operations may also be retained by the Exchange to serve as LTSE Listings Agents). At all times, LTSE Listings Agents will be subject to the satisfaction and the oversight of the Exchange's Chief Regulatory Officer, with all actions proposed by LTSE Listings Agents subject to the Exchange's regulatory authority. Separately, the Exchange will permit LTSE to use and redistribute written marketing, public communications, and sales materials concerning the LTSE Listings business, subject to the Exchange's consent (not to be unreasonably withheld).

Further, the Exchange's arrangement with LTSE Listings Agents is subject to important restrictions designed to protect the Exchange's responsibilities as a self-regulatory organization and the confidentiality of its books and records pertaining thereto. First, each LTSE Listings Agent is considered to be an agent of the Exchange in connection with performance of services under the Exchange's arrangement with LTSE, pursuant to Article XI, Section 4 of the Amended and Restated Operating Agreement of Investors' Exchange LLC. Thus, as appropriate, information pertaining to the self-regulatory function of the Exchange may be made available to a LTSE Listings Agent to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange. However, pursuant to the Exchange's arrangement with LTSE, the Exchange will not share confidential regulatory information with LTSE (other than with LTSE regulatory personnel that are LTSE Listings Agents and that do not have direct involvement in LTSE's commercial operations).

(3) Proposed LTSE Listings Rules

The proposed LTSE Listings Rules that would apply to LTSE Listings Issuers fall into five general categories: (i) board of directors and committee requirements, (ii) rules requiring supplemental long-term disclosures, (iii) rules requiring long-term alignment of executive compensation, (iv) rules requiring long-term shareholder voting structure, and (v) certain other rules that further encourage LTSE Listings Issuers to focus on long-term value creation. In addition, the Exchange is proposing rules that would clarify the application of certain existing Exchange rules to LTSE Listings Issuers.

(A) Board of Directors and Committee Requirements

The proposed LTSE Listings Rules would create new requirements for the boards of directors and board committees of LTSE Listings Issuers designed to align the board with the objectives of the LTSE Listings Rules. Specifically, the LTSE Listings Rules would require each LTSE Listings Issuer to establish a board committee dedicated to overseeing the issuer's strategies for creating and sustaining long-term growth and a committee dedicated to selecting or recommending qualified director nominees. The LTSE Listings Rules would also impose additional obligations on audit committees and

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Additionally, LTSE has agreed that each LTSE Listings Agent will be required to consent in writing to the application to them of the following provisions, which are consistent with Article VII of the Bylaws of IEX Group, Inc.: non-interference with, and due regard for, the Exchange's self-regulatory function; confidentiality of the Exchange's books and records pertaining to its self-regulatory function; maintenance of books and records related to services under the Exchange's arrangement with LTSE and services provided to the Exchange by LTSE Listings Agents at a location within the United States; compliance with the federal securities laws and the rules and regulations promulgated thereunder and cooperation with the SEC in respect of the SEC's oversight responsibilities regarding the Exchange and the self-regulatory functions and responsibilities of the Exchange; and consent to jurisdiction of the United States federal courts, the SEC and the Exchange for purposes of any suit, action or proceeding arising out of or relating to services provided to the Exchange and the Exchange's arrangement with LTSE.

compensation committees designed to increase oversight and transparency, among other things. These corporate governance requirements are discussed further below.

(i) Long-Term Strategy and Product Committee

Proposed Rule 14A.405(c)(1) would require that each LTSE Listings Issuer's board of directors maintain a committee specifically dedicated to overseeing the LTSE Listings Issuer's strategic plans for long-term growth (the "LTSP Committee"). Proposed Rule 14A.405(c)(3) would require that an LTSE Listings Issuer adopt a formal written LTSP Committee charter (and that the LTSP Committee will review and reassess the adequacy of the charter on an annual basis) specifying, among other things, the scope of the LTSP Committee's responsibilities, and how it will carry out those responsibilities, including structure, processes and membership requirements, and that the LTSP Committee must report regularly to the board of directors. The requirement to report regularly is intended to ensure that the board of directors has insight into the LTSP Committee's work and input into the LTSE Listings Issuer's strategic objectives.

Although LTSE Listings Issuers would have some flexibility in designing their LTSP Committee, in order to ensure that adequate board focus is placed on long-term strategy, proposed Rule 14A.405(c)(4) would require that the LTSP Committee include a minimum of three members of the board and that a majority of the LTSP Committee members be independent. This majority independence requirement is intended to mitigate potential conflicts of interest and ensure that outside perspectives are brought into discussions and decisions regarding the company's long-term strategy.

Proposed Rule 14A.405(c)(3)(C) would require that the LTSP Committee's charter be made available on or through the LTSE Listings Issuer's website. The

Exchange believes that increased transparency about the LTSP Committee's functions and policies is in the best interest of investors, and companies that hold themselves to a set of long-term standards should make such information available. The Exchange notes that Item 407 of Regulation S-K<sup>35</sup> requires that a public company's audit, nominating and compensation committee charters be either available to security holders on the company's website or as an appendix to its proxy or information statement provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the company's last fiscal year. The Exchange understands that many long-term focused investors expect to be able to readily access corporate governance information, such as board committee charters, on a company's website rather than by searching through a company's SEC filings, and accordingly the Exchange believes that it is appropriate to explicitly impose this requirement.

Proposed Rule 14A.405(c)(2) would provide LTSE Listings Issuers with additional flexibility by permitting the board of directors to allocate the LTSP Committee's responsibilities to committees of their own denomination, provided that the committee (i) is subject to a formal written charter that satisfies the requirements of proposed Rule 14A.405(c)(3), including that such committee report regularly to the board of directors, and (ii) complies with the committee composition requirements set forth in proposed Rule 14A.405(c)(4). However, proposed Rule 14A.405(c)(1) would prohibit the LTSP Committee from assuming any roles or responsibilities that are required to be undertaken by an LTSE Listings Issuer's independent board committees, since the LTSP Committee is not required to be composed of all independent directors.

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<sup>35</sup> 17 CFR 229.407.

(ii) Nominating/Corporate Governance Committee

IEX Rule 14.405(e)(1)(A) requires that director nominees may be selected (or recommended for selection by the board of directors) by either independent directors constituting a majority of the board's independent directors or a nominations committee comprised solely of independent directors. With respect to LTSE Listings Issuers, proposed Rule 14A.405(d)(1) would require that director nominees must be selected (or recommended for selection by the board of directors) by a nominating/corporate governance committee comprised solely of independent directors, rather than independent directors constituting a majority of the board's independent directors. The Exchange believes that, in view of the differentiated focus of the LTSE Listings category, requiring LTSE Listings Issuers to maintain a separate, independent nominating/corporate governance committee would better facilitate selection of directors that are aligned with such focus. In addition, another national securities exchange has a substantially similar requirement, requiring that listed companies select director nominees through a separate nominating committee composed entirely of independent directors.<sup>36</sup>

Notwithstanding the requirement that the nominating/corporate governance committee be comprised solely of independent directors, proposed Rule 14A.405(d)(2) would provide that the nominating/corporate governance committee may include a non-independent director if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of an LTSE Listings Issuer and its shareholders and certain other conditions are satisfied. In addition, proposed Rule 14A.405(d)(3) would provide that exclusively

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<sup>36</sup> See NYSE Listed Company Manual, Rule 303A.04.

independent director oversight of director nominations shall not be required in cases where the right to nominate a director legally belongs to a third party; provided that an LTSE Listings Issuer would still be obligated to comply with all committee composition requirements. These limited exceptions are consistent with exceptions contained in the Exchange's corresponding rules for companies other than LTSE Listings Issuers.<sup>37</sup>

IEX Rule 14.405(e)(5) provides that the requirements regarding director nominations set forth in IEX Rule 14.405 do not apply if the issuer is subject to a binding obligation that requires a director nomination structure inconsistent with IEX Rule 14.405 and such obligation pre-dates the approval of IEX Rule 14.405. Proposed Rule 14A.405(d)(4), however, would provide that LTSE Listings Issuers may not rely on this exception. The Exchange believes that this provision, which would permit a nomination process and board composition based on a pre-existing obligation that pre-dates when the IEX rules were approved, is inconsistent with the goal of allowing longer-term shareholders to gain voting rights over time and the flexibility is unnecessary given that the required timing for the pre-existing obligation is so limited.

Proposed Rule 14A.405(d)(6)(A) would require that each LTSE Listings Issuer adopt a formal written nominating/corporate governance committee charter (and that the nominating/corporate governance committee review and reassess the adequacy of the formal written charter on an annual basis) specifying, among other things, the scope of the nominating/corporate governance committee's responsibilities, and how it will carry out those responsibilities, including structure, processes and membership requirements, and that the nominating/corporate governance committee must report regularly to the

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<sup>37</sup> See IEX Rules 14.405(e)(3) and (4).

board of directors. The explicit requirement to report regularly is intended to ensure that the board of directors has insight into the nominating/corporate governance committee's work.

Proposed Rule 14A.405(d)(6)(B) would require that the nominating/corporate governance committee's charter be made available on or through an LTSE Listings Issuer's website. The Exchange believes that increased transparency about the nominating/corporate governance committee's functions and policies is in the best interest of long-term investors, and companies that hold themselves to a set of long-term standards should make such information available. The Exchange notes that Item 407 of Regulation S-K<sup>38</sup> requires that a public company's nominating committee charter be either available to security holders on the company's website or as an appendix to its proxy or information statement provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the company's last fiscal year. The Exchange understands that many long-term focused investors expect to be able to readily access corporate governance information, such as board committee charters, on a company's website rather than by searching through a company's SEC filings, and accordingly the Exchange believes that it is appropriate to explicitly impose this requirement.

Proposed Rule 14A.405(d)(5) would provide LTSE Listings Issuers additional flexibility by permitting the board of directors to allocate the nominating/corporate governance committee's responsibilities to committees of their own denomination, provided that the committee is comprised entirely of independent directors and that such

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<sup>38</sup> 17 CFR 229.407.

committee is subject to a formal written charter that satisfies the requirements of proposed Rule 14A.405(d)(6), including that such committee report regularly to the board of directors.

(iii) Additional Audit Committee and Compensation Committee Requirements

As is the case with all issuers listed on the Exchange, LTSE Listings Issuers are required to comply with the audit committee and compensation committee requirements set forth in IEX Rules 14.405(c) and (d). LTSE Listings Issuers, however, would additionally be required to comply with audit committee and compensation committee requirements set forth in proposed Rule 14A.405.

Specifically, under proposed Rules 14A.405(a) and 14A.405(b)(2), the audit committee and compensation committee charters must specify that each committee will report regularly to the board of directors. While the Exchange believes that it is inherent in any public company's board and committee organizational structure that board committees report regularly to the board, in view of the focus of the LTSE Listings category, the Exchange also believes it is appropriate to make this requirement explicit for LTSE Listings Issuers. In addition, the charters of each of the audit committee and compensation committee must be made available on or through an LTSE Listings Issuer's website. The Exchange notes that Item 407 of Regulation S-K<sup>39</sup> under the Securities Act of 1933<sup>40</sup> requires that a public company's audit and compensation committee charters be either available to security holders on the company's website or as an appendix to its proxy or information statement provided to security holders at least

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<sup>39</sup> 17 CFR 229.407.

<sup>40</sup> 15 U.S.C. 77a et seq.

once every three fiscal years, or if the charter has been materially amended since the beginning of the company's last fiscal year. The Exchange understands that many long-term focused investors expect to be able to readily access corporate governance information, such as board committee charters, on a company's website rather than by searching through a company's SEC filings, and accordingly the Exchange believes that it is appropriate to explicitly impose this requirement. The Exchange further notes that another national securities exchange requires companies listed on their exchange to meet similar requirements with respect to their audit committee and compensation committee.<sup>41</sup>

In addition to the foregoing charter requirements, proposed Rule 14A.405(b)(2)(A)(ii) would require that the compensation committee charter specify that the compensation committee must adopt executive compensation guidelines. Proposed requirements with respect to executive compensation guidelines are described under "Long-Term Alignment of Executive Compensation" below. Proposed Rule 14A.405(b)(1) would provide LTSE Listings Issuers additional flexibility by permitting the board of directors to allocate the compensation committee's responsibilities to committees of their own denomination, provided that the committee is comprised entirely of independent directors and that such committee is subject to a formal written charter that satisfies the requirements of IEX Rule 14.405(d)(1) and proposed Rule 14A.405(b)(2), including that such committee report regularly to the board of directors.

(iv) Corporate Governance Guidelines

Pursuant to proposed Rule 14A.409, each LTSE Listings Issuer would be required to adopt and disclose corporate governance guidelines. These corporate governance

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<sup>41</sup> See NYSE Listed Company Manual, Rules 303A.05(b) and 303A.07(b).

guidelines would be required to address director qualification standards, director responsibilities, director access to management, and director orientation and continuing education, among other things. In view of the differentiated focus of the LTSE Listings category, the Exchange believes that increased disclosure about the company's approach to corporate governance through the adoption and disclosure of corporate governance guidelines is appropriate for LTSE Listings Issuers. In addition, the Exchange notes that the proposed corporate governance guideline requirements are similar to the requirements imposed by the listing rules of another national securities exchange.<sup>42</sup>

Although proposed Rule 14A.409 would generally track the New York Stock Exchange's ("NYSE") corporate governance guidelines requirements, the LTSE Listings Rules would deviate from these requirements in certain respects. Specifically, proposed Rule 14A.409(a)(4) would require that a significant portion—no less than 40%—of director compensation be paid in stock-based compensation tied to long-term periods. An LTSE Listings Issuer would be required to disclose in its corporate governance guidelines what it considers to be "long-term" for this purpose. In addition, this proposed rule would require that LTSE Listings Issuers adopt director stock ownership guidelines, which must include minimum ownership requirements that can be met over the length of board service. These provisions are designed to ensure that LTSE Listings Issuers incentivize directors to focus on the long-term, but also provide LTSE Listings Issuers with flexibility to design their own plans for director compensation. In addition, the Exchange does not believe that these requirements would impose a significant burden on LTSE Listings Issuers, as the Exchange believes that issuers have already trended toward

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<sup>42</sup> See NYSE Listed Company Manual, Rule 303A.09.

having equity represent a large portion of director compensation.<sup>43</sup> Proposed Rule 14A.409(a)(4) would also provide that LTSE Listings Issuers consider other means of aligning director compensation with long-term strategies, including deferred share delivery, vesting periods or similar measures.

(B) Long-Term Strategy and Product Disclosures

The Exchange understands that LTSE's analysis indicated that long-term investors generally value information regarding a company's long-term plans and objectives, that may not otherwise be required to be disclosed. In particular, this information could (i) provide long-term investors with greater information upon which to evaluate a company's progress toward long-term goals and (ii) allow companies to be evaluated based on whether they are making prudent management and strategic decisions that investors believe enhance long-term growth. The proposed LTSE Listings Rules would therefore require—in addition to and separate from all disclosures required under applicable securities laws, the Commission's rules and the Exchange's other rules—that LTSE Listings Issuers provide certain supplemental disclosures regarding an LTSE Listings Issuer's long-term strategy and products (the "LTSP Disclosures").<sup>44</sup> The LTSP Disclosure requirements are supplemental to and would not supersede or impact other disclosure obligations. The LTSP Disclosures would be subject to all securities law requirements just as other public company disclosures. Proposed Rule 14A.207(a) would remind LTSE Listings Issuers that all disclosures must comply with applicable law and

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<sup>43</sup> See Yaron Nili, Trends in Board of Director Compensation, HLS Forum on Corporate Governance and Financial Regulation (April 13, 2015), available at <https://corpgov.law.harvard.edu/2015/04/13/trends-in-board-of-director-compensation>.

<sup>44</sup> An LTSE Listings Issuer would be required to include its LTSP Disclosures in its Annual Report Supplement. See infra Section II.A.1.(3)(B)(v) (Location and Manner of LTSP Disclosures).

Commission rules and regulations, including rules and regulations pertaining to the use and reconciliation of non-GAAP financial measures and any securities law obligations regarding updating or correcting prior public statements or disclosures.

(i) Disclosure of Long-Term Growth Strategy

Proposed Rule 14A.207(c) would require each LTSE Listings Issuer to include in its LTSP Disclosures a discussion of the company's "Long-Term Growth Strategy." Long-Term Growth Strategy would be defined for these purposes as "the strategy, as determined by management and the board of directors and approved by the LTSP Committee, that is focused on achieving long-term growth."<sup>45</sup> This requirement 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. By disclosing a Long-Term Growth Strategy, managers have the opportunity to explain to shareholders the long-term goals and objectives specific to their company, and then be held responsible for achieving those objectives. While the disclosure of the Long-Term Growth Strategy must include the information described below, an LTSE Listings Issuer is otherwise free to design its Long-Term Growth Strategy with the explicit oversight and approval of its LTSP Committee.

Proposed Rule 14A.207(c)(1)(A) would require that each Long-Term Growth Strategy disclosure describe how the LTSE Listings Issuer defines "long-term" for purposes of its Long-Term Growth Strategy and how it made this determination.<sup>46</sup> Under

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<sup>45</sup> See proposed Rule 14A.002(a)(11).

<sup>46</sup> The Exchange understands that LTSE Listings Issuers in different industries may have different definitions of "long-term." For example, a pharmaceutical company that must

proposed Rule 14A.207(c)(1)(B), LTSE Listings Issuers would be required to include in the Long-Term Growth Strategy disclosure a discussion of the “Leading Indicators” that the company uses to measure its progress toward its long-term goals. “Leading Indicators” are defined as those quantitative metrics, either financial or non-financial, that an LTSE Listings Issuer’s management uses to help it forecast revenue, profit, or other common after-the-event measures of long-term success.<sup>47</sup> By way of example, a biotech company may use as a Leading Indicator the number of patents it has obtained. A media company, on the other hand, may prefer to use as a Leading Indicator the number of page views or ad clicks its website has received.

LTSE Listings Issuers must also discuss key milestones that the LTSE Listings Issuer aims to achieve with respect to its Leading Indicators and must report on the progress the LTSE Listings Issuer has made in achieving these key milestones. The LTSP Disclosures require use of Leading Indicators and key milestones so that companies may define and share with investors those long-term metrics that the company itself views as critical to measuring its success, providing investors insight into the company’s internal analysis and allowing investors to consider the company’s progress towards these long-term goals.

Proposed Rule 14A.207(c)(1)(C) would require that each Long-Term Growth Strategy disclosure include a discussion of any changes to an LTSE Listings Issuer’s Long-Term Growth Strategy since its last publication, including changes to Leading Indicators and/or key milestones. An LTSE Listings Issuer’s Long-Term Growth Strategy

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spend years researching and testing the efficacy of a proposed new drug may have a much longer definition of “long-term” than a clothing retailer.

<sup>47</sup> See proposed Rule 14A.002(a)(10).

may evolve as its business develops and new goals are created or changed. This disclosure requirement would provide greater transparency by ensuring that long-term investors are made aware of any such changes to the issuer's Long-Term Growth Strategy and are able to measure an LTSE Listings Issuer's progress toward these goals.

Pursuant to proposed Rule 14A.207(c)(2), the Long-Term Growth Strategy must include details relating to different businesses of the LTSE Listings Issuer if the information is material to the overall strategy. The purpose of this proposed rule is to account for the fact that issuers may have diverse businesses with different strategic objectives. For example, a company may operate in multiple industries or have products tailored to different markets. This rule requires LTSE Listings Issuers to provide information relating to different strategies if such information is material to the broader long-term strategy.

While transparency into long-term strategy is an important goal and critical for long-term focused investors, in certain situations the Exchange understands that public disclosure of this information could risk competitive harm to the company. In these limited situations, proposed Rule 14A.207(c)(3) would provide an exemption. Specifically, if an LTSE Listings Issuer's LTSP Committee makes a determination that disclosure of any aspect of the LTSE Listings Issuer's Long-Term Growth Strategy would be "reasonably likely to result in material harm" to the company's competitive position, the LTSE Listings Issuer could exclude such information from its LTSP Disclosures, so long as the LTSE Listings Issuer complies with all applicable securities

laws.<sup>48</sup> Any such determination would be required to be documented by the LTSP Committee and made in accordance with its fiduciary duties. In addition, proposed Rule 14A.405(c)(3)(B)(iv) would require that an LTSE Listings Issuer's LTSP Committee develop and disclose in its charter a process for making this determination and for determining that withholding the disclosure would not contravene any applicable securities laws. In order to ensure that investors are aware that the LTSP Disclosures of an LTSE Listings Issuer relying on this exemption are incomplete, proposed Rule 14A.207(c)(3) would require that such an LTSE Listings Issuer disclose in its LTSP Disclosures that it is withholding certain information as a result of competitive concerns. To ensure that investors have the opportunity to assess the judgment of the LTSP Committee regarding the withholding of competitive information, upon the time that any withheld information is no longer competitively sensitive, proposed Rule 14A.207(c)(3) would require that an LTSE Listings Issuer disclose that information in its LTSP Disclosures, even though this information may no longer be relevant to its current Long-Term Growth Strategy.

(ii) Disclosure Related to Buybacks

As noted above,<sup>49</sup> particular concern has been raised regarding the risk that some companies pressured to meet short-term goals may spend cash to repurchase their own

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<sup>48</sup> This proposed requirement has the same objective as Instruction 4 of Item 402(b) of Regulation S-K, which provides that an SEC reporting company is not required to disclose in SEC filings certain information regarding compensation “involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant.” See also Question 118.04 of Regulation S-K Questions and Answers of General Applicability (September 21, 2017), available at <https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm>.

<sup>49</sup> See supra notes 16–17 and accompanying text.

shares rather than on making long-term investments. As a result, the Exchange believes that some long-term investors are particularly interested in enhanced disclosure regarding companies' share repurchase activity. Proposed Rule 14A.207(d) would therefore require that each LTSE Listings Issuer disclose certain information relating to "Buybacks" or issuer repurchases in addition to those required to be disclosed pursuant to Item 703 of Regulation S-K<sup>50</sup> under the Securities Act of 1933.<sup>51</sup> Specifically, under proposed Rule 14A.207(d) each LTSE Listings Issuer would be required to disclose in its LTSP Disclosures its "EPS Net of Buybacks," defined in proposed LTSE Listings Rule 14A.002(a)(6) as the quotient calculated by dividing (i) net income (as reported in the LTSE Listings Issuer's financial statements in its most recent Annual Report) by (ii) the sum of outstanding shares and shares that were subject to a Buyback during the prior fiscal year. This disclosure requirement is designed to provide investors with transparency into the impact of Buybacks on a company earnings per share for any particular period, i.e., by indicating what the company's earnings-per-share would have been had the company not engaged in repurchases.

(iii) Disclosure Related to Human Capital Investment

Proposed Rule 14A.207(e) would require that each LTSE Listings Issuer disclose in its LTSP Disclosures the extent to which the LTSE Listings Issuer's selling, general and administrative expenses ("SG&A") (as reported in the LTSE Listings Issuer's most recent Annual Report)<sup>52</sup> consisted of "Human Capital Investment." For these purposes,

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<sup>50</sup> 17 CFR 229.703.

<sup>51</sup> 15 U.S.C. 77a et seq.

<sup>52</sup> "Annual Report" is defined in Proposed Rule 14A.002(a)(1) as "consistent with IEX Rule 14.207(d), the annual report made available to Shareholders containing audited financial

“Human Capital Investment” refers to the aggregate amount an LTSE Listings Issuer spends on formal training of workers in new skills to improve job performance, including, among other things, fees or expenses related to personnel hired or retained to train employees, training materials, tuition assistance and continuing education or similar programs.

Each LTSE Listings Issuer must also disclose the amount spent on Human Capital Investment per full-time equivalent employee. The Exchange understands that long-term investors generally are interested in this metric, and the disclosure requirement is thus designed to enable long-term investors to conduct a comparative analysis of Human Capital Investment per employee across LTSE Listings Issuers of different sizes.

The costs related to Human Capital Investment are generally accounted for within SG&A, and therefore considered an expense rather than an investment. The Exchange understands that long-term focused investors and companies believe that it is in the long-term interest of companies to make investments in their workforce to retain them and improve their skills. Although, as an accounting matter, these may be viewed as a short-term costs, the Exchange believes that long-term focused investors value information regarding the extent to which companies are making investments in the long-term development and success of its employees.

(iv) Disclosure Related to Research and Development

The Exchange understands that investments in research and development (“R&D”) are generally considered long-term investments for companies. LTSE’s analysis

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statements of the LTSE Listings Issuer and its subsidiaries (which, for example, may be on Form 10-K, 20-F, 40-F or N-CSR) within a reasonable period of time following the filing of the annual report with the Commission.”

indicated that additional data on R&D investment is particularly sought after by long-term focused investors. Therefore, proposed Rule 14A.207(f) would require that each LTSE Listings Issuer disclose in its LTSP Disclosures the amount of R&D spending that is short-term focused and the amount that is long-term focused. This requirement is intended to provide investors with greater transparency into an LTSE Listings Issuer's planning and goals around R&D programs, particularly in light of the risk that a company may under-invest in R&D in order to meet shorter-term financial metrics. Because each company and industry differs in its definition of long-term and short-term time horizons, proposed Rule 14A.207(f) provides flexibility by allowing LTSE Listings Issuers to determine their own definitions of short-term and long-term R&D programs, provided that an LTSE Listings Issuer disclose the definitions used and the process by which they determined them.

(v) Location and Manner of LTSP Disclosures

Proposed Rule 14A.207(b) would require an LTSE Listings Issuer to make its LTSP Disclosures publicly available pursuant to a supplement to the LTSE Listings Issuer's Annual Report (an "Annual Report Supplement"). The Annual Report Supplement must be distributed to shareholders along with, and in the same manner as, the LTSE Listings Issuer's Annual Report. In addition, an LTSE Listings Issuer would be required to make the Annual Report Supplement available on or through its website and include a statement in its Annual Report that the LTSP Disclosures are available in the Annual Report Supplement and provide the website address. These requirements are designed to facilitate transparency and ensure that shareholders are aware of and able to access an LTSE Listings Issuer's LTSP Disclosures. LTSE Listings Issuers would also be

required to notify IEX Regulation<sup>53</sup> once its Annual Report Supplement has been made publicly available on its website. This requirement is designed to help the Exchange monitor for compliance with the LTSP Disclosure requirements.

(vi) Review by LTSP Committee

Pursuant to proposed Rule 14A.207(b), the LTSP Disclosures would be required to be reviewed and approved by the LTSP Committee on at least an annual basis. Based on its review, the LTSP Committee must determine whether to recommend to the board of directors that the LTSP Disclosures be included in the Annual Report Supplement.<sup>54</sup> Any board and committee approvals should be reflected in board resolutions as appropriate. This requirement is intended to increase alignment between board members and company managers on the company's long-term focus and helps to ensure that adequate board focus is placed on long-term strategy.

(vii) Disclosures Upon Initial Listing

As described above, an LTSE Listings Issuer would be required to include its LTSP Disclosures in its Annual Report Supplement. However, a newly public LTSE Listings Issuer may not provide its Annual Report Supplement to shareholders until months after its initial public offering. Therefore, to ensure that shareholders obtain information on a timely basis, the LTSE Listings Rules would include transitional

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<sup>53</sup> IEX Regulation is the department of the Exchange or designated employees of the Exchange that supervise, administer, or perform the regulatory functions of the Exchange, including the administration of any regulatory services agreements with another self-regulatory organization to which the Exchange is a party. See IEX Rule 1.160(q).

<sup>54</sup> This proposed requirement is modeled after the audit committee paradigm in Regulation S-K, which requires the audit committee to state whether it recommends to the board of directors that the audited financial statements be included in the annual report on Form 10-K. See 17 CFR 229.407(d)(3)(i)(D).

disclosure provisions for newly listed issuers. Specifically, proposed Rule 14A.207(g)(1) would provide that, no later than at the time of its initial listing, an LTSE Listings Issuer must make the disclosure required by proposed Rule 14A.207(c)(1) (Disclosure of Long-Term Growth Strategy) publicly available on its website. Such disclosure must be made in compliance with applicable rules and regulations relating to the dissemination of free writing prospectuses. After its initial listing, an LTSE Listings Issuer would provide this disclosure in its Annual Report Supplement, as described above. Similarly, proposed Rule 14A.207(g)(2) would provide that, after initial listing, an LTSE Listings Issuer must make the disclosures required by proposed Rule 14A.207(d) (Disclosure Related to Buybacks), Rule 14A.207(e) (Disclosure Related to Human Capital Investment) and Rule 14A.207(f) (Disclosure Related to Research and Development) publicly available on its website by the earlier of when the company files its next Form 10-K or Annual Report Supplement.<sup>55</sup> After its initial listing, an LTSE Listings Issuer would provide this disclosure in its Annual Report Supplement, as described above.

(C) Long-Term Alignment of Executive Compensation

The Exchange believes that long-term focused companies seek to align the compensation of their Executive Officers<sup>56</sup> with the long-term performance of the company, while excessively short-term compensation instruments could promote incentives that are not aligned with long-term performance. Proposed Rule 14A.405(b)(3) would therefore require that an LTSE Listings Issuer's compensation committee adopt a

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<sup>55</sup> The disclosures are required to be made the "earlier of" when a company files a Form 10-K or Annual Report Supplement to account for the fact that, for an IPO company, a 10-K filing may significantly precede the first annual meeting.

<sup>56</sup> IEX Rule 14.405(a)(1) defines "Executive Officer" for these purposes as persons meeting the definition of "officer" under Rule 16a-1(f) under the Act.

set of executive compensation guidelines applicable to Executive Officers that are designed to link executive compensation to the long-term value of the LTSE Listings Issuer. The compensation committee would be required to include in the executive compensation guidelines general principles for determining the form and amount of Executive Officer compensation (and for reviewing those principles, as appropriate). In addition, the executive compensation guidelines would be required to be consistent with certain minimum standards described below. These requirements are intended to ensure that LTSE Listings Issuers design their executive compensation plans in accordance with specified long-term parameters, but also provide sufficient flexibility to allow such issuers to remain competitive in crafting individual compensation packages.

(i) Consistency with Long-Term Growth Strategy

Proposed Rule 14A.405(b)(3)(A) would require that the compensation committee ensure that the time periods and performance metrics used to determine Incentive-Based Compensation<sup>57</sup> for Executive Officers are consistent with an LTSE Listings Issuer's Long-Term Growth Strategy. Since the members of the LTSP Committee would be the directors with the greatest involvement in the LTSE Listings Issuer's Long-Term Growth Strategy, the compensation committee may consult with the LTSP Committee in assessing whether such time periods and performance metrics are consistent with the LTSE Listings Issuer's Long-Term Growth Strategy.

In addition, an LTSE Listings Issuer would be required to disclose in its proxy statement or, if no proxy statement is filed, its Annual Report Supplement, whether or not

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<sup>57</sup> Pursuant to proposed Rule 14A.002(a)(8), Incentive-Based Compensation would be defined as "any variable compensation, fees, or benefits that serve as an incentive or reward for performance."

the compensation committee has determined that the time periods and performance metrics used to determine Incentive-Based Compensation for Executive Officers are consistent with LTSE Listings Issuer's Long-Term Growth Strategy.

(ii) Long-Term Compensation and Vesting Periods

Proposed Rule 14A.405(b)(3)(B)(i) would prohibit an LTSE Listings Issuer from providing Executive Officers with any Incentive-Based Compensation that is tied to a financial or performance metric that is measured over a time period of less than one year, or grant any time-based equity compensation that has any portion that vests in less than a year from the grant date (or from the hire date, in the case of new hire grants). By requiring Incentive-Based Compensation and time-based equity compensation to be tied to time periods of at least one year, the LTSE Listings Rules are designed to require that LTSE Listings Issuers avoid creating potential incentives to manage for short-term results, encouraging management to focus on longer-term time horizons.

Proposed Rule 14A.405(b)(3)(B)(ii) would require that equity compensation awarded to Executive Officers vest over a period (the "Vesting Period") of at least five years. This minimum five-year Vesting Period is intended to ensure that executive compensation is tied to long-term company performance. In addition, while LTSE Listings Issuers would have flexibility in determining the specific vesting schedule within the Vesting Period (*i.e.*, the percentage of total equity compensation vested per year), the vesting schedule would be required to reflect the long-term focus of the equity grant. For example, a ten-year vesting schedule that vested 90% of the total equity compensation in the first year would not be consistent with a long-term focus.

The Exchange understands, however, that there may be certain situations in which

accelerated vesting would be appropriate and would not undermine the underlying purpose of this provision. As a result, proposed Rule 14A.405(b)(3)(B)(ii) would allow for accelerated vesting upon the death of an Executive Officer or the occurrence of a disability that renders an Executive Officer permanently unable to remain employed at the LTSE Listings Issuer in any capacity. Whether to adopt exceptions of this type would be left to the discretion of the LTSE Listings Issuer and would be required to be outlined in the agreement providing the equity grant.

While the LTSE Listings Rules seek to maintain a long-term focus in compensation, there may be exceptional circumstances in which the payment of shorter-term Incentive-Based Compensation or shorter-term Vesting Periods are consistent with this focus and may be required for specific business purposes. Therefore, proposed Rule 14A.405(b)(3)(B)(iii) would provide that the compensation committee may provide alternative time periods for incentive and equity compensation if there is a business necessity and the LTSE Listings Issuer discloses and explains such business necessity in the LTSE Listings Issuer's proxy statement, or if the LTSE Listings Issuer does not file a proxy statement, in the LTSE Listings Issuer's Annual Report Supplement. To ensure that this exception remains limited, the rule would also prohibit the amount of equity awards granted in the aggregate that vests before the first anniversary of the grant date, or that does not meet the minimum five-year vesting schedule, from exceeding 5% of the total number of shares authorized for grant in any fiscal year.

Proposed Rule 14A.405(b)(3)(B)(iv) would provide that the compensation committee must determine appropriate Vesting Periods and amounts, as well as holding periods, for equity compensation awarded to Executive Officers that apply following an

Executive Officer's retirement or resignation. Such Vesting Periods and amounts would also be required to be consistent with the requirements set forth in proposed Rule 14A.405(b)(3)(B)(ii) described above. The compensation provisions of the LTSE Listings Rules are premised on the idea that Executive Officers having financial interests in the long-term performance of the company—even after their departure from the company—will have a greater incentive to conduct business with long-term performance in mind and to undertake efforts for effective succession and departure planning. The Exchange understands that business needs and market practice may vary for different companies in different industries and sectors. Therefore, the specific schedule for vesting and holding is left for determination by the individual LTSE Listings Issuer, but each LTSE Listings Issuer is required to provide such a schedule to promote these underlying purposes.

(iii) Exemption for Existing Agreements Prior to Listing

The Exchange appreciates that an issuer may have entered into compensation arrangements prior to deciding whether to list on LTSE Listings and recognizes that it may impose an undue burden on such companies if they were required to unwind executive compensation plans that have been in effect for an extended period of time in order to list on LTSE Listings. Therefore, proposed Rule 14A.405(b)(3)(C) would provide an exemption from the executive compensation requirements contained in the LTSE Listings Rules for any executive compensation that is subject to an existing written agreement entered into at least one year prior to the initial listing of an LTSE Listings Issuer on the Exchange. The proposed exemption for preexisting compensation arrangements contains a one-year look-back period that is designed to assure that the

exempted compensation arrangements were bona fide preexisting arrangements, and not entered into shortly before applying for listing on LTSE Listings in order to avoid the restrictions contained in the LTSE Listings Rules. In addition, the use of this exemption must be disclosed in the Annual Report Supplement.

(iv) Smaller Reporting Companies

IEX Rule 14.405(d)(5) exempts “Smaller Reporting Companies,” as defined in Rule 12b-2 under the Act,<sup>58</sup> from certain compensation committee requirements. Notwithstanding these exemptions that otherwise apply to companies listed on the Exchange, Proposed Rule 14A.405(b)(4) would provide that an LTSE Listings Issuer that is a Smaller Reporting Company must adopt the executive compensation guidelines described above. In addition, such an issuer would be required to certify that it has adopted a formal written compensation committee charter or board resolution that specifies the additional compensation committee charter requirements for LTSE Listings Issuers—that the compensation committee must report regularly to the board of directors and adopt executive compensation guidelines in accordance with proposed Rule 14A.405(b)(2). The Exchange believes that, notwithstanding that Smaller Reporting Companies may have less resources than other issuers, these compensation committee requirements are an important feature of the LTSE Listings Rules and are a key part of the differentiated choice provided by the LTSE Listings category that long-term focused investors find important, and that accordingly, Smaller Reporting Companies electing to list on LTSE Listings should be required to comply with such compensation committee requirements.

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<sup>58</sup> See 17 CFR 240.12b-2.

(D) Long-Term Shareholder Voting Structure

Consistent with the focus of the LTSE Listings category to provide a differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation, proposed Rule 14A.413(b) would require that LTSE Listings Issuers maintain certain voting rights provisions in their corporate organizational documents that provide all shareholders with the ability, at the shareholders' option, to accrue additional voting power over time. As described more fully below, these provisions are designed to align with the long-term focus of the LTSE Listings category by providing long-term investors in an LTSE Listings Issuer with a greater role in corporate governance than short-term shareholders. The Exchange believes that long-term investors in a public company are more likely than short-term shareholders to exercise their voting rights in a manner that prioritizes long-term growth over short-term results.

Specifically, as of the date of the company's initial listing on LTSE Listings, each holder of equity securities listed on LTSE Listings must be entitled to an equal number of votes per share (the "Initial Voting Power") on a per class basis.<sup>59</sup> For each full calendar month in which a shareholder maintains continuous record ownership of shares, the voting power of such shares for so long as they are held of record by such shareholder

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<sup>59</sup> The Exchange notes that all shares listed on LTSE Listings must have a minimum level of Initial Voting Power and conform to the voting rights set forth in proposed Rule 14A.413. However, proposed Supplementary Material .01(a) to proposed Rule 14A.413 clarifies that proposed Rule 14A.413(b) would not prevent an LTSE Listings Issuer, so long as not inconsistent with IEX Rule 14.413, from (i) maintaining multiple classes of securities, including shares that have voting power per share in excess of the Initial Voting Power of the securities listed on the Exchange, and/or (ii) establishing or maintaining classes of shares not listed on the Exchange that do not meet the requirements of proposed Rule 14A.413(b).

would increase by at least one twelfth (1/12th) over the shares' Initial Voting Power on the last business day of the month, up to an amount that is ten times their Initial Voting Power.<sup>60</sup> If, at any time, a shareholder transfers its shares out of record ownership (whether for purposes of sale or otherwise), then on the date of such transfer, such shares will revert to entitling the shareholder to the Initial Voting Power of such shares. Because each holder of a class of equity securities listed on LTSE Listings would have an equal number of votes per share on the date of initial listing, each investor would have an equal opportunity to obtain increased voting rights over time and no shareholders would receive a preference over others.

(i) Mechanism for Tracking Holding Periods

The Exchange notes that tracking the ultimate beneficial ownership and length of continued ownership may be difficult or impossible for shares held through the common “street name” ownership system. Shares held in street name are registered on the books of an issuer’s transfer agent in the name of a nominee selected by the Depository Trust Company’s (“DTC”), with DTC maintaining records of the number of shares held for its various brokerage firm participants, and those brokerage firms each maintaining records of the number of shares held for its particular customers.<sup>61</sup> As a result, an issuer reviewing its own books and records maintained by its transfer agent may be unable to definitively determine who its ultimate “street name” shareholders are, or for how long

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<sup>60</sup> Pursuant to proposed Supplementary Material .01(b) to proposed Rule 14A.413, an LTSE Listings Issuer would be permitted to provide that the voting rights of shareholders holding of record increase at a rate greater than one twelfth (1/12th) per month, provided that the voting power of such shares may not increase to a level that exceeds ten times their Initial Voting Power.

<sup>61</sup> See generally Securities Exchange Act Release No. 76743 (December 22, 2015), 80 FR 81947 (December 31, 2015).

they have held their shares.

In order to track ownership for purposes of those shareholders opting to accrue additional voting power, the LTSE Listings Rules require that LTSE Listings Issuers look to whether a beneficial owner is also the holder of the shares in the LTSE Listings Issuer's records, *i.e.*, as a holder of record. A shareholder that purchases its shares through a brokerage firm may initially receive shares held on its behalf in street name through the brokerage firm. However, through a Direct Registration Program ("DRP"),<sup>62</sup> a shareholder maintaining its shares in street name may request that its shares (or some portion of its shares) be transferred to instead be held in record ownership on the books of the issuer's transfer agent, or transferred back to its brokerage account.<sup>63</sup> For these purposes, a shareholder will be deemed to have record ownership as of the date the shareholder appears as the record owner on the books of the LTSE Listings Issuer directly, or through a third-party transfer agent. In addition, for these purposes, record owners of shares listed on LTSE Listings would include those holding a physical paper certificate of such shares and those holding such shares through a DRP.

Although requiring that shares be held in record ownership in order to accrue additional voting rights may raise administrative burdens on shareholders, the Exchange believes the ability for LTSE Listings Issuers to verify and track the ownership of these

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<sup>62</sup> The Exchange's rules already require that any issuer listed on the Exchange, including on the LTSE Listings, be eligible for a DRP. See IEX Rule 14.208. Because the ability to transfer shares to and from record ownership through a DRP is critical to tracking of long-term shareholders' voting rights for LTSE Listings Issuers, the exception contained in Rule 14.208(c) that allows certain foreign issuers to list securities on the Exchange that are not eligible for a DRP would not be available to LTSE Listings Issuers. See proposed Rule 14A.208.

<sup>63</sup> See Securities Exchange Act Release No. 76743 (December 22, 2015), 80 FR 81947 (December 31, 2015) at text accompanying n.92-93.

shareholders for purposes of calculating voting rights outweighs these burdens. In addition, because only those shareholders that expect to hold their shares for the long-term would opt to do so, the Exchange does not believe that electronically transferring the shares through a DRP would present a significant burden.

Calculating voting rights in accordance with the provisions of proposed Rule 14A.413(b) will be novel to LTSE Listings Issuers and their shareholders and may present challenges. However, the Exchange understands that several transfer agents have indicated to LTSE that they are able to develop software or systems to assist LTSE Listings Issuers with tracking their shareholder voting rights as calculated in accordance with proposed Rule 14A.413(b). In order to ensure that LTSE Listings Issuers have such tools available to them and facilitate accurate calculation of their shareholders' voting rights, proposed Rule 14A.413(b)(5) would require that, prior to listing securities on LTSE Listings, a prospective LTSE Listings Issuer must obtain from its transfer agent a certification confirming that the transfer agent has software or other systems or processes available to the LTSE Listings Issuer that will enable the transfer agent and the LTSE Listings Issuer to determine, as of a particular record date, the LTSE Listings Issuer's shareholders' voting rights calculated in accordance with LTSE Listings Rule 14A.413(b).

(ii) Shareholders Holdings Through Custodians

As noted above, in order to track ownership for purposes of those shareholders opting to accrue additional voting power, the LTSE Listings Rules require that LTSE Listings Issuers look to whether a beneficial owner is also the holder of the shares in the LTSE Listings Issuer's records, i.e., as a holder of record. The Exchange understands,

however, that for various reasons, including regulatory requirements applicable to registered investment advisers and registered investment companies,<sup>64</sup> there may be shareholders that maintain ownership of securities through a third-party custodian, rather than in their own name. To accommodate such investors, proposed Supplementary Material .01(e) to proposed Rule 14A.413 would permit an LTSE Listings Issuer to recognize a shareholder as a holder of record solely for purposes of proposed Rule 14A.413(b), therefore entitled to increase its voting power over time, so long as the custodian for such shareholder becomes the shareholder of record and maintains its record ownership in a manner that indicates the name of the ultimate beneficial owner. By way of example, if Investment Fund ABC maintains custody of its assets through Bank XYZ, an LTSE Listings Issuer may recognize Investment Fund ABC as the record holder of the shares of an LTSE Listings Issuer solely for purposes of this rule if Bank XYZ registers the shares on the books of the LTSE-Listed Issuer as being owned by “Bank XYZ, as custodian for Investment Fund ABC.” The Exchange believes that maintaining record ownership in this manner would allow an LTSE Listings Issuer to track that the period of time during which the shares have been held by the underlying investor, even if held through the custodian, while meeting the needs of those shareholders that wish to maintain custody of their assets through a separate custodian.

(iii) Technical Changes in Record Ownership

Because of the mechanics of tracking long-term ownership, the term of ownership for purposes of LTSE Listings Issuers calculating a shareholder’s increased voting rights

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<sup>64</sup> See, e.g., 17 CFR 275.206(4)-2 (with respect to registered investment advisers) and 15 U.S.C. 80a-17(f) and 17 CFR 270.17f-1–f-7 (with respect to registered investment companies).

is tied not to the actual date of a shareholder's acquisition or disposition of beneficial ownership, but the date the shares are transferred into or out of record ownership, i.e., the date that the name of the owner on the LTSE Listings Issuer's books is changed. The Exchange acknowledges that this may result in situations where technical changes to ownership structure could cause a shareholder to lose any accrued long-term voting. As a general matter, the Exchange believes that a bright-line rule that can be clearly and consistently applied is preferable to the need to analyze the surrounding circumstances regarding particular changes to record ownership. Nonetheless, the Exchange recognizes that particular LTSE Listings Issuers may wish to allow a shareholder to maintain any accrued long-term voting that would otherwise be lost as a result of technical changes. As a result, proposed Supplementary Material .01(d) to proposed Rule 14A.413 would permit (but not require) an LTSE Listings Issuer to adopt a process by which a shareholder may demonstrate that, notwithstanding a technical change in record ownership, a change in beneficial ownership for purposes of this rule has not occurred. LTSE Listings Issuers choosing to do so may develop their own list of changes for which such waivers may be granted, so long as they are of a purely technical nature that clearly did not involve a change of beneficial ownership (such as re-titling ownership of shares due to a name change or a change from sole ownership to joint ownership with a spouse) rather than an actual change of the person holding voting and investment discretion.

(iv) Potential Evasion of Loss of Long-Term Voting Upon Sale

The ability to accrue long-term voting is intended to incentivize those beneficial owners with voting and investment discretion over an LTSE Listings Issuer's shares to become long-term shareholders, provide a mechanism by which such long-term

shareholders can evidence their long-term ownership (i.e., by becoming record holders), and increase the relative role of such long-term shareholders in the governance of an LTSE Listings Issuer. There may be situations where it becomes apparent to an LTSE Listings Issuer that, notwithstanding the record holder of its shares remaining the same, the beneficial ownership has changed, in an effort to evade the purposes of long-term voting. For example, the Exchange recognized the risk that a person may create a special-purpose entity (an “SPE”) to hold shares of an LTSE Listings Issuer and register the SPE as the owner of the shares on the books of the LTSE Listings Issuer. Over time, the shares held by the SPE would accrue additional voting rights. Ordinarily, once those shares are transferred, they would lose any accrued long-term voting and revert to their Initial Voting Power. However, if the person were to instead transfer the ownership of the SPE to a third party, that transfer may not result in a change of ownership of the underlying shares of the LTSE Listings Issuer on the books and records of the LTSE Listings Issuer’s transfer agent.

To address this situation, proposed Supplementary Material .01(c) to proposed Rule 14A.413 would permit (but not require) an LTSE Listings Issuer to include provisions in its governance documents such that if its board of directors adopted a resolution reasonably determining that, notwithstanding technical compliance with the provisions of an LTSE Listings Issuer’s governance documents relating to the increasing voting power of long-term shareholders and continuity of record ownership, there has in fact been a change in beneficial ownership with respect to shares held of record that would evade the purposes of LTSE Listings Rule 14A.413(b), such shares may be treated as being entitled only to their Initial Voting Power. Any LTSE Listings Issuer that

provides for such a process in its governance documents must also provide a process through which a shareholder directly affected by such a determination may challenge it. The Exchange believes that, together, this should protect LTSE Listings Issuers from an attempt by shareholders to improperly sell increased voting rights to new shareholders, while affording affected shareholders with an opportunity to present additional information demonstrating that a change of beneficial ownership has not occurred.

(v) Consistency with the Exchange’s Voting Rights Policy

The Exchange believes that LTSE Listings Rule 14A.413(b) is fully consistent with IEX Rule 14.413 (the Exchange’s “Voting Rights Policy”). The Voting Rights Policy provides that the voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Act may not be disparately reduced or restricted through any corporate action or issuance. The Voting Rights Policy provides examples of corporate actions or issuances that could violate this policy, including the adoption of time-phased voting plans, which could encompass structures whereby investors gain additional voting rights over time.<sup>65</sup> While the requirements of LTSE Listing Rule 14A.413(b) could be viewed as similar to time-phased voting plans, the Exchange does not believe that complying with LTSE Listing Rule 14A.413(b) would be inconsistent

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<sup>65</sup> Another example of such a corporate action enumerated in the Voting Rights Policy is the issuance of a new class of super-voting stock. Proposed Supplementary Material .01(f) to proposed Rule 14A.413 would provide that for purposes of LTSE Listings, a class of securities shall be considered super-voting stock if (i) the Initial Voting Power of such class of securities exceeds the Initial Voting Power of any of the LTSE Listings Issuer’s existing classes of common stock listed on LTSE Listings or (ii) the rate at which the voting power of such class may increase over time is greater than the corresponding rate for any of the LTSE Listings Issuer’s existing classes of common stock listed on LTSE Listings. An LTSE Listings Issuer would not be prohibited by proposed Rule 14.413 from issuing additional shares of a class of stock that is listed on LTSE Listings or from issuing shares of a new class of stock that does not constitute super-voting stock as described above.

with the Voting Rights Policy, which bars a company already listed on the Exchange from undertaking the prohibited corporate actions. Because LTSE Listings Issuers would be required, as a pre-condition to listing on LTSE Listings, to already have in place a voting rights structure as of its date of its initial listing that complies with LTSE Listings Rule 14A.413(b), no new corporate action that disparately reduces voting rights would be taken subsequent to listing on the Exchange. In addition, pursuant to LTSE Listings Rule 14A.413(b), all shareholders of the same class of LTSE Listings Issuer's common stock listed on LTSE Listings will have the same voting rights in that any shareholder is eligible to accrue additional voting rights. To the extent that the effect of LTSE Listings Rule 14A.413(b) is that those shareholders that elect not to accrue additional voting power have their relative voting rights reduced relative to those that elect to accrue additional voting power, this impact is the result of a corporate action taken prior to listing on LTSE Listings, known to investors prior to their determining to purchase shares of an LTSE Listings Issuer, and the actions or inactions of shareholders subsequent to listing. Thus, the Exchange believes that compliance with LTSE Listings Rule 14A.413(b) will not cause existing shareholders' voting rights to be disparately reduced or restricted through any corporate action or issuance within the meaning of IEX Rule 14.413.

In addition to the fact that the voting rights structure required under LTSE Listings Rule 14A.413(b) must be in place prior to listing on the Exchange, Supplementary Material .01 to IEX Rule 14.413 provides that the Exchange's "interpretations under the policy will be flexible, recognizing that both the capital markets and the circumstances and needs of the Exchange Companies change over time."

Accordingly, the Exchange will interpret the policy flexibly with regard to its consistency with an LTSE Listings Issuer's voting structures designed to meet LTSE Listings Rule 14A.413(b). As the Commission recognized in approving the voting rights policies of other self-regulatory organizations that are substantively identical to IEX Rule 14.413, "there may be valid business or economic reasons for corporations" for companies to provide different voting rights to different shareholders, and that the voting rights policies "provide issuers with a certain degree of flexibility in adopting corporate structures, so long as there is a reasonable business justification to so doing, and such transaction is not taken or proposed primarily with the intent to disenfranchise."<sup>66</sup> The Exchange believes that providing long-term investors with an opportunity for a greater voice in corporate governance is a reasonable business justification for an issuer to adopt the long-term voting structure required by proposed LTSE Listings Rule 14A.413(b) and that, because every shareholder has the opportunity to elect to accrue additional voting power, the structure would not be implemented with a primary purpose or intent to disenfranchise particular shareholders.

(E) Other Long-Term Requirements

The Exchange is proposing to include in the LTSE Listings Rules certain other rules also designed to encourage LTSE Listings Issuers to focus on long-term value creation. These proposed rules are described further below.

(i) Earnings Guidance

Proposed Rule 14A.420(a) would provide that LTSE Listings Issuers are

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<sup>66</sup> See Securities Exchange Act Release No. 35121 (December 19, 1994), 59 FR 66570 (December 27, 1994) (approving rule changes adopting voting rights policies of the New York Stock Exchange, American Stock Exchange, and National Association of Securities Dealers).

generally prohibited from providing earnings guidance more frequently than annually.

For these purposes, “Earnings Guidance” would be defined as any public disclosure made to shareholders containing a projection of the LTSE Listings Issuer’s revenues, income (including income loss), or earnings (including earnings loss) per share.<sup>67</sup> As noted above, LTSE’s research indicates that pressure to meet quarterly earnings guidance can cause managers to sacrifice long-term growth for short-term performance.<sup>68</sup> Proposed Rule 14A.420(a) is intended to help companies alleviate the pressures surrounding the quarterly earnings process with respect to guidance, with a goal to ultimately shift the focus of both companies and investors toward longer-term milestones.

Notwithstanding the general prohibition on providing Earnings Guidance more frequently than annually, proposed Rule 14A.420(a) would permit an LTSE Listings Issuer to update previously issued Earnings Guidance at any time if it believes that such disclosure would be required (i) by IEX Rule 14.207(b)(1), which requires an issuer to promptly disclose to the public any material information that would reasonably be expected to affect the value of the issuer’s securities or influence investors’ decisions; (ii) by other applicable law (including any of the Commission reporting rules); or (iii) to make the previously issued Earnings Guidance not misleading.

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<sup>67</sup> See proposed Rule 14A.002(a)(6).

<sup>68</sup> See Graham, *supra* note 15; Yongtae Kim, Lixin (Nancy) Su, Xindong (Kevin) Zhu, Does the Cessation of Quarterly Earnings Guidance Reduce Investors’ Short-Termism? (December 12, 2016), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2885624](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2885624). See also Chairman Jay Clayton, Hearing before the Senate Banking Committee on the Nomination of Jay Clayton, of New York, to be a Member of the Securities and Exchange Commission (March 23, 2017), available at <https://www.gpo.gov/fdsys/pkg/CHRG-115shrg24998/html/CHRG-115shrg24998.htm> (“In my experience, certain companies view the operational and other pressures inherent in quarterly earnings as costly, including because they detract from long-term planning and strategic initiatives.”).

Proposed Rule 14A.420(b) would clarify that any Earnings Guidance provided by an LTSE Listings Issuer, including updates and supplementary disclosure related to Earnings Guidance, shall be considered material information for purposes of IEX Rule 14.207(b)(1). As a result, LTSE Listings Issuers would be required to comply with the disclosure and notification requirements set forth therein when disseminating such information.

(ii) Long-Term Stakeholder Policies

Proposed Rule 14A.425(a) would require that each LTSE Listings Issuer develop and publish a policy regarding the LTSE Listings Issuer's impact on the environment and community, and a policy explaining the LTSE Listings Issuer's approach to diversity. The Exchange 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. Each LTSE Listings Issuer may have different stakeholders and different views on these issues. The LTSE Listings Rules would not impose any requirements on the content of these policies. Rather, proposed Rule 14A.425(a) would only require that LTSE Listings Issuers adopt and publish a policy, providing LTSE Listings Issuers with flexibility in developing what they believe to be appropriate policies for their business, and providing investors with insight into an LTSE Listings Issuer's management of these issues.

Proposed Rule 14A.425(b) would require that each LTSE Listings Issuer review the policies required by proposed Rule 14A.425(a) at least annually and make such policies available on or through its website. In addition, each LTSE Listings 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 Supplement, 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 an LTSE Listings Issuer's stakeholder policies. Although these policies must be made publicly available, proposed Supplementary Material .01 to proposed Rule 14A.425 would provide that the required stakeholder policies need not be stand-alone documents and may be included as part of other LTSE Listings Issuer policies or reports.

(iii) Website Requirements

Proposed Rule 14A.430 would require LTSE Listings Issuers to have and maintain a publicly accessible website. In addition, to the extent that an LTSE Listings Issuer would be required under any applicable provision of the LTSE Listings Rules to make documents available on or through its website, an LTSE Listings Issuer would be required to ensure that the website is accessible from the United States, the website clearly indicates in the English language the location of such documents on the website and that such documents are available in a printable version in the English language. The Exchange understands that many long-term focused investors expect to be able to access corporate governance and other information regarding companies in which they have invested through the company's website, and accordingly the Exchange believes that it is appropriate to explicitly impose this website requirement. For transparency purposes, various proposed LTSE Listings Rules, as discussed above, would require that materials be made available on an LTSE Listings Issuer's website.<sup>69</sup>

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<sup>69</sup> See proposed Rules 14A.207(a), 14A.207(f), 14A.405(a)(2), 14A.405(b)(1)(B), 14A.405(c)(2)(C), 14A.405(d)(2), 14A.405(d)(5)(B), 14A.407(a)(2)(B), 14A.409(b) and 14A.425(b).

Proposed Rule 14A.430 is intended to specify in further detail the manner in which LTSE Listings Issuers may satisfy these website posting requirements. The Exchange notes that the foregoing website requirements are substantially similar to the requirements imposed by the listing rules of another national securities exchange.<sup>70</sup>

(iv) Certification Requirements

Proposed Rule 14A.435 would require that LTSE Listings Issuers make certain certifications to the Exchange. Specifically, proposed Rule 14A.435(a) would require LTSE Listings Issuers certify, at or before the time of listing, that all applicable listing criteria have been satisfied. This requirement is substantively identical to IEX Rule 14.202(b), which requires all issuers listed on the Exchange to submit such a certification. The Exchange proposes to repeat this requirement in the LTSE Listings Rules to clarify that the certification must include compliance with the LTSE Listings Rules, in addition to the Exchange's other listing rules.

Proposed Rule 14A.435(b) would require that the CEO of each LTSE Listings Issuer certify annually to the Exchange that the LTSE Listings Issuer is in compliance with proposed Rule Series 14A.400, which contain the corporate governance requirements of the LTSE Listings Rules, qualifying the certification to the extent necessary. Various IEX listing rules impose certification requirements,<sup>71</sup> and IEX Rule 14.207 requires that a listed company must provide the Exchange with prompt notification after an Executive Officer of the company becomes aware of any noncompliance by the company with the corporate governance requirements set forth in IEX Rule 14.400. However, given the unique nature of the LTSE Listings Rules, the Exchange believes that adding an annual certification requirement for LTSE Listings Issuers will assist the

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<sup>70</sup> See NYSE Listed Company Manual, Rule 307.00.

<sup>71</sup> See, e.g., IEX Rule 14.202(b) (requiring a company listing on the Exchange to certify, at or before the time of listing, that all applicable listing criteria have been satisfied); IEX Rule 14.405(c)(1) (requiring each company listed on the Exchange to certify that it has adopted a formal written audit committee charter and that the audit committee will review and reassess the adequacy of the formal written charter on an annual basis); IEX Rule 14.405(d)(1) (requiring each company listed on the Exchange to certify that it has adopted a formal written compensation committee charter and that the compensation committee will review and reassess the adequacy of the formal written charter on an annual basis).

CEO and senior management of such issuers in overseeing and assuring compliance with LTSE Listings corporate governance requirements on an ongoing basis. In addition, the Exchange notes that another national securities exchange similarly requires that the CEO of a company listed on that exchange certify annually that he or she is not aware of any violation by the company of that exchange's corporate governance listing standards.<sup>72</sup> Proposed Rule 14A.435(b) would also require each LTSE Listings Issuer CEO certify annually to the Exchange that the LTSE Listings Issuer has designated an employee responsible for ensuring that the voting power of the LTSE Listings Issuer's securities is determined in accordance with proposed Rule 14A.413(b) (Long-Term Voting). The Exchange believes that such an annual certification requirement would help ensure that LTSE Listings Issuers establish internal systems reasonably designed to assure compliance with LTSE Listing's long-term voting provisions.

(v) Issuer Designation Requirements and Dually-Listed Securities

The Exchange proposes to permit an LTSE Listings Issuer to list a class of securities that, in connection with its initial public offering, has been approved for listing on another national securities exchange ("Dually-Listed Securities"). The Exchange expects that this would foster competition among markets and further the development of the national market system. The Exchange would make an independent determination of whether such companies satisfy applicable listing standards and would require such companies to enter into a dual-listing agreement with the Exchange.<sup>73</sup> In the event that a company chooses to dually-list on both LTSE Listings and another national securities exchange in connection with its IPO, the Exchange would expect such other national securities exchange to be the LTSE Listings Issuer's "Primary Listing Market."<sup>74</sup> The

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<sup>72</sup> See NYSE Listed Company Manual, Rule 303A.12(a).

<sup>73</sup> The Exchange would also monitor the dually-listed LTSE Listings Issuer for compliance with all applicable IEX Rules on an ongoing basis, as it would for any other LTSE Listings Issuer.

<sup>74</sup> Pursuant to proposed Rule 14A.002(a)(14), "Primary Listing Market" would have the same meaning as that term is defined in the Nasdaq Unlisted Trading Privileges national market system plan and consistent with use of the term "listing market" in the Consolidated Quotation Service and Consolidated Tape Association national market system plans. Where an LTSE Listings Issuer is dually-listed on another national securities exchange, the initial trading of such issuer's securities on the Exchange would not occur until after the completion of the opening auction for such securities on the first day of listing on the Primary Listing Market.

Exchange is proposing certain additional rules to facilitate dual-listings.

Pursuant to proposed Rule 14A.210(b), an LTSE Listings Issuer that has Dually-Listed Securities would be required to notify the Exchange promptly if it receives oral or written notification from the other national securities exchange on which the LTSE Listings Issuer's Dually-Listed Securities are listed that such class of listed securities has fallen below the continued listing requirements of such other market. In addition, such an LTSE Listings Issuer would also be required to notify the other national securities exchange on which its Dually-Listed Securities are listed if it receives oral or written notification that such class of listed securities has fallen below the continued listing requirements of Chapter 14 of the IEX Rules or the LTSE Listings Rules contained in Chapter 14A of the IEX Rules.

Proposed Supplementary Material .01 to proposed Rule 14A.210 would clarify the application of certain IEX Rules, such as rules governing trading halts, for Dually-Listed Securities, given the fact that the Exchange would not be the Primary Listing Market. These proposed rules are designed to avoid creating potential confusion for investors and market participants with respect to Dually-Listed Securities. The Exchange notes that these provisions are substantially consistent with the rules of other national securities exchanges.<sup>75</sup>

(F) Proposed Rules Clarifying Application of Existing Exchange Rules

In addition to proposed rules that would encourage LTSE Listings Issuers to focus on long-term value creation, the Exchange is also proposing rules that would clarify the

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<sup>75</sup> See Nasdaq Stock Market Equity Rules 5220 and IM-5220; CBOE BZX Exchange, Inc. Rule 14.3(d) and Rule 14.3 Interpretation and Policy .01.

application of certain existing Exchange rules to LTSE Listings Issuers. These proposed rules are described further below.

(i) Supplemental Nature of LTSE Listings Rules

Proposed Rule 14A.001(a) would provide that the LTSE Listings Rules are supplemental listing standards applicable to LTSE Listings Issuers and that LTSE Listings Issuers must also fully qualify for listing under Chapter 14 of the Exchange's rules and the LTSE Listings Rules on an initial and ongoing basis. This provision is intended to clarify that LTSE Listings Issuers would be subject to the LTSE Listings Rules, as well as all other applicable listing rules of the Exchange, except as they may be specifically modified for LTSE Listings Issuers.

Proposed Rule 14A.001(b) would provide that LTSE Listings Issuers may only list common equity securities on LTSE Listings. Although the Exchange maintains listing rules relevant for other types of securities, such as American Depositary Receipts, preferred stock, rights and warrants, among others, such securities would not be eligible for listing on LTSE Listings. The Exchange is proposing to establish an LTSE Listings category to provide a differentiated choice for issuers and investors that prefer listing standards explicitly designed to promote long-term value creation. At this time, the Exchange believes that, given that corporate governance and voting rights are more typically associated with common equity than other securities, it is most appropriate for a company electing to become subject to the LTSE Listings Rules to list its common equity on LTSE Listings.

(ii) Change of Control and Reverse Mergers

IEX Rule 14.102(a) provides that an Exchange-listed company must apply for

initial listing in connection with a transaction whereby the Exchange-listed company combines with, or into, an entity that is not listed on the Exchange, resulting in a change of control of the company and potentially allowing such entity to obtain an Exchange listing. The rule enumerates certain factors that the Exchange will consider in determining whether a change of control has occurred, including, but not limited to, changes in management, board of directors, voting power, ownership and financial structure. Proposed Rule 14A.102(a)(1) would impose an analogous requirement on LTSE Listings Issuers combining with, or into, an entity that is not listed on LTSE Listings, including an entity that is not an LTSE Listings Issuer that is otherwise listed on the Exchange. The Exchange would consider the same factors enumerated in IEX Rule 14.102(a) when determining whether a change of control has occurred for purposes of proposed Rule 14A.201(a)(1). Proposed Rule 14A.102(a)(1) would also require that any combined entity applying for initial listing as permitted by this rule must agree to comply with all applicable requirements of Chapter 14A, including requirements relating to long-term voting set forth in proposed Rule 14A.413.

Proposed Rule 14A.102(a)(2) would clarify the impact of a change of control transaction on the proposed long-term voting provisions of LTSE Listings. Specifically, proposed Rule 14A.102(a)(2) would provide that if an initial listing following a change of control meets applicable listing requirements and the LTSE Listings Issuer is the surviving entity following the business combination, any shares of the LTSE Listings Issuer that have accrued additional voting power pursuant to proposed Rule 14A.413(b) prior to the business combination would retain such additional voting power following the business combination. On the other hand, if the non-LTSE Listings Issuer is the

surviving entity or a new entity is formed following the business combination, all shares of the class or classes of securities to be listed on LTSE Listings will have voting power equal to their Initial Voting Power at the time of such listing. Any additional voting power accrued pursuant to Rule 14A.413(b) by the shareholders of the non-surviving LTSE Listings Issuer prior to the business combination would not be retained.

IEX Rule 14.102(c) provides that a company that is formed by a Reverse Merger<sup>76</sup> is eligible to submit an application for initial listing only if the combined entity has satisfied certain conditions. Proposed Rule 14A.102(b) would clarify that such an entity would not be eligible to apply for initial listing on LTSE Listings. The Exchange does not believe a reverse merger company would be able to satisfy the requirements of the LTSE Listings Rules.

(iii) General Procedures and Prerequisites for Initial and Continued Listing on LTSE Listings

Proposed Rule 14A.200 would establish general procedures and prerequisites for initial and continued listing on LTSE Listings. This rule series is intended to supplement and clarify the application of the general procedures and prerequisites set forth in the IEX Rule Series 14.200.

IEX Rule 14.200(a) requires a company seeking the initial listing of one or more classes of securities on the Exchange to participate in a free confidential pre-application eligibility review by the Exchange in order to determine whether it meets the Exchange's listing criteria. If, upon completion of this review, the Exchange determines that a

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<sup>76</sup> A "Reverse Merger" is generally defined as "any transaction whereby an operating company becomes an Exchange Act reporting company by combining, either directly or indirectly, with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise." See IEX Rule 14.002(a)(27).

company is eligible for listing, the Exchange will provide the company with a clearance letter, notifying the company that it has been cleared to submit an original listing application. Proposed Rule 14A.200(a) would clarify that if a company is seeking a listing on LTSE Listings, prior to providing a clearance letter, the Exchange must determine that the company is eligible for listing under the LTSE Listings Rules, in addition to the Exchange's other listing criteria.<sup>77</sup>

IEX Rule 14.200(b) outlines the applications and qualifications process for companies that have received a clearance letter. A company seeking to list on LTSE Listings would be required to follow this process, including executing a listing agreement and listing application, as required by IEX Rule 14.202(a). However, proposed Rule 14A.200(b) would clarify that a company seeking to list on LTSE Listings would execute a listing agreement and listing application on the forms designated by the Exchange for LTSE Listings Issuers. These forms and applications would be available from IEX Regulation.

IEX Rule 14.200(c) provides prerequisites for applying to list on the Exchange. A company seeking to list on LTSE Listings would be required to satisfy these prerequisites, except as otherwise provided by proposed Rule 14A.200(c). For example, IEX Rule 14.203(c) provides that all securities initially listed on the Exchange, but for securities which are in any event book-entry only, must be eligible for a DRP, except that a foreign issuer is not subject to this requirement if it submits to the Exchange a written statement from an independent counsel in such company's home country certifying that a

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<sup>77</sup> As is the case with other companies applying for listing on the Exchange, if the Exchange determines that a company is ineligible for listing on LTSE Listings, the company may request a review of IEX's determination pursuant to the process set forth in IEX Rule 9.555.

law or regulation in the home country prohibits compliance with this requirement.

Because eligibility for a DRP is essential to the proper functioning of LTSE Listings' long-term shareholder voting provisions, proposed Rule 14A.200(c)(1) would provide that foreign issuers may not rely on the exception in IEX Rule 14.203(c) from the DRP eligibility requirement.

IEX Rule 14.203(d) provides that a company applying to list on the Exchange must pay all applicable fees as described in Rule Series 14.600. Proposed Rule 14A.200(c)(3) would provide that in lieu of paying all applicable fees as described in IEX Rule Series 14.600, a company seeking the initial listing of one or more classes of securities on LTSE Listings would be required to pay all applicable fees as described in LTSE Listings Rule Series 14A.600. This provision is intended to clarify that companies seeking to list on LTSE Listings are not required to pay two separate listing fees.

Proposed Rule 14A.200(c)(2) would provide that at the time that a company initially lists on LTSE Listings, the company may not already have any security listed for trading either on the Exchange (i.e., listed on IEX pursuant to IEX listing rules other than Chapter 14A) or on any other national securities exchange (unless dually listing on the other national securities exchange concurrently). The Exchange is initially limiting the availability of LTSE Listings to companies seeking to list on LTSE Listings concurrently with their initial public offering (whether listing on LTSE Listings only or dually-listing on LTSE Listings and another national securities exchange concurrently). The Exchange may in the future seek to expand the availability of LTSE Listings to other companies seeking to list on LTSE Listings that are otherwise already listed on a national securities exchange.

(iv) Exemptions from Certain Corporate Governance Requirements

IEX Rule 14.407 provides exemptions from the Exchange's corporate governance rules for certain types of companies, sets forth phase-in schedules for, among other things, initial public offerings and companies emerging from bankruptcy and describes the applicability of the corporate governance rules to Controlled Companies.<sup>78</sup> Proposed Rule 14A.407 would clarify the application of these rules with respect to the LTSE Listings Rules, as described below.

IEX Rule 14.407(a) provides exemptions to certain of the Exchange's corporate governance requirements for asset-backed issuers and other passive issuers, cooperatives, Foreign Private Issuers,<sup>79</sup> limited partnerships and management investment companies. Proposed Rule 14A.407(a) would provide that an LTSE Listings Issuer may not rely on these exemptions with respect to the LTSE Listings Rules. The Exchange believes that exemptions for these entities is either (i) not necessary because LTSE Listings is only available for common equity or (ii) not appropriate given that LTSE Listings is designed to require particular minimum corporate governance. However, proposed Rule 14A.407(a) would clarify that a Foreign Private Issuer that is able to meet all applicable requirements of Chapter 14A, including the requirement to distribute an Annual Report Supplement, would be permitted to list on LTSE Listings.

IEX Rule 14.407(b) allows a company listed on the Exchange to phase-in its

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<sup>78</sup> The term "Controlled Company" is defined in Rule 14.407(c)(1) as an Exchange-listed company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company.

<sup>79</sup> Pursuant to IEX Rule 14.002(a)(15), the term "Foreign Private Issuer" as used in the Exchange's rules has the same meaning as under Exchange Act Rule 3b-4.

compliance with certain Exchange rules over a period of time in certain situations, including for initial public offerings, companies emerging from bankruptcy, transfers from other markets, and companies ceasing to be a Smaller Reporting Company. These phase-in schedules would apply to LTSE Listings Issuers in the same manner as they would apply to other companies listed on the Exchange. In addition to these phase-in schedules, proposed Rule 14A.407(b) would provide that an LTSE Listings Issuer that is listing in connection with its initial public offering or that is emerging from bankruptcy is permitted to phase-in its compliance with the requirement that the LTSP Committee be comprised of a majority of independent directors. Specifically, this rule would provide that at least one member of the LTSP Committee must be an independent director at the time of listing and a majority of the members of the LTSP Committee must be independent within 90 days of listing. This phase-in schedule is substantially similar to the corresponding phase-in schedules applicable to other board committees.<sup>80</sup>

IEX Rule 14.407(c) outlines how the Exchange's listing rules apply to a Controlled Company. This rule provides that a Controlled Company is generally exempt from requirements to establish a compensation committee and requirements relating to independent director oversight of director nominations. These exemptions would apply to LTSE Listings Issuers in the same manner as they would apply to other companies listed on the Exchange. In addition to these exemptions, proposed Rule 14A.407(c)(1) would provide that a Controlled Company is exempt from the additional compensation committee and nominating/corporate governance committee requirements under proposed LTSE Listings Rules 14A.405(b) and 14A.405(d), except for the requirement to

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<sup>80</sup> See IEX Rule 14.407(b)(1).

adopt executive compensation guidelines under proposed Rule 14A.405(b)(3). Proposed Rule 14A.407(c)(2) would provide that to the extent that a Controlled Company does not have a compensation committee, the independent directors on the LTSP Committee or the independent directors of the board of directors must be responsible for adopting the executive compensation guidelines.

(v) Notification of Noncompliance

IEX Rule 14.410 provides that a company listed on the Exchange must provide the Exchange with prompt notification after an Executive Officer of the company becomes aware of any noncompliance by the company with the requirements of Rule Series 14.400, which outlines the general corporate governance requirements for companies listed on the Exchange. Proposed Rule 14A.410 would supplement this requirement by requiring an LTSE Listings Issuer to provide the Exchange with prompt notification after an Executive Officer of the LTSE Listings Issuer becomes aware of any noncompliance by the LTSE Listings Issuer with the requirements of LTSE Listings Rule Series 14A.400, which contains the supplemental corporate governance requirements for LTSE Listings Issuers.

(vi) Shareholder Approval Calculation

IEX Rule 14.412 sets forth the circumstances in which an Exchange-listed company is required to obtain shareholder approval prior to the issuance of securities in connection with the (1) the acquisition of the stock or assets of another company; (2) a change of control; (3) equity-based compensation of officers, directors, employees, or consultants; and (4) private placements. In some cases, such approval is required, among other potential triggers, if the common stock being issued “has or will have upon issuance

voting power equal to or in excess of 20% of the voting power outstanding before the issuance ...” (the “Shareholder Approval Threshold”).<sup>81</sup> The Exchange believes that the purpose of this aspect of the rule is to ensure that existing shareholders have a voice in transactions that would materially dilute the voting power of their shares.

Ordinarily, determining whether an issuance equals or exceeds the Shareholder Approval Threshold would be a simple calculation: the issuer would multiply the number of shares to be issued by the voting power of such shares and divide by the voting power of the shares outstanding before the issuance. If this number equals or exceeds the Shareholder Approval Threshold, shareholder approval would be required. However, shares listed on LTSE Listings (or that are of the same class of securities that are listed on LTSE Listings) may accrue voting power over time. As a result, even if the voting power of newly issued shares of an LTSE Listings Issuer is less than the Shareholder Approval Threshold at the time of the issuance, it may potentially be greater than the Shareholder Approval Threshold after a certain period of time, depending on how many of the new shares are registered in record name and accrue additional voting power over time, relative to the number of existing shareholders that do so.

IEX Rule 14.412 requires that a company listed on the Exchange receive shareholder approval in advance of the “potential issuance of common stock” where the “common stock has or will have upon issuance voting power” that would exceed the Shareholder Approval Threshold. The Exchange notes that, by its terms, IEX Rule 14.412 therefore could be read to look only to the voting power of the shares upon issuance,

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<sup>81</sup> IEX Rule 14.412(a)(1)(A). Shareholder approval may also be required if the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities. See IEX Rule 14.412(a)(1)(B).

rather than the potential voting power of those shares after some period of time.<sup>82</sup>

However, certain interpretations and supplementary material relating to other aspects of IEX Rule 14.412 do look to the potential for changes to the securities being issued, even past the initial issuance.<sup>83</sup> As a result, in light of the potential increased future voting power of new shares to be issued, the Exchange believes that it is appropriate, in calculating the Shareholder Approval Threshold, to require that LTSE Listings Issuers assign a greater level of voting power to the newly issued shares than the Initial Voting Power of those shares, on the presumption that the ultimate voting power of those shares will increase over time.

The Exchange notes, however, that because shareholders that obtain shares in a transaction may or may not elect to hold their shares in record ownership, and may hold them in such manner for varying lengths of time, it is not possible to determine with precision how many shares issued in any transaction would accumulate additional voting power or the extent of voting power those shares will eventually attain. One potential approach would be to assume that all of the new shares in a proposed issuance will be registered in record name and held in that form for ten years, thereby accruing the maximum additional voting power (*i.e.*, ten times the Initial Voting Power).<sup>84</sup> Under that

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<sup>82</sup> See, *e.g.*, IEX Rule 14.412(a)(1)(A).

<sup>83</sup> Specifically, for the purposes of determining the number of shares to be issued in an offering of future-priced securities, the Exchange staff will “look to the maximum potential issuance of common shares.” See Supplementary Material .04 to IEX Rule 14.412. Future-priced securities are securities that are convertible into common stock at a conversion price that is linked to the market price of the underlying common stock at the time of conversion. In such cases, the lower the price of the company’s common stock at the time of conversion, the more shares of common stock the holder of the future-priced security would receive.

<sup>84</sup> This approach would be similar to the approach required for calculating the number of shares that may be issued pursuant to an offering of future-priced securities, as discussed

approach, when conducting the shareholder approval calculation, the issuer would multiply the voting power of the shares to be issued (the numerator of this calculation) by ten and would then divide that number by the existing voting power of the shares outstanding (the denominator of this calculation). The Exchange believes that issuers would then be required to obtain shareholder approval frequently, because they would be required to assume a much higher voting power for the shares to be issued (to account for potential future voting power), but would also be required to assume that the voting power of the outstanding shares remains the same. The Exchange believes that this approach would not be appropriate because the Exchange believes that it would be extremely unlikely that all shares of a new issuance will be held in record name by the same shareholder uninterrupted for ten years.<sup>85</sup> In addition, the Exchange believes that it would be even more unlikely for all shares of a new issuance to accrue votes up to the maximum amount while the shares outstanding remain static and do not accrue any additional votes. Given what the Exchange believes is the extremely low probability of this occurrence, the Exchange believes that requiring issuers to make these particular

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supra note 83. However, the Exchange believes that this approach would not be appropriate for determining whether the voting power of an issuance by an LTSE Listings Issuer would exceed the Shareholder Approval Threshold. In addition to the reasons described below, the Exchange believes purchasers of convertible securities have a strong economic incentive to exercise their conversion rights and acquire common stock at some point in time. If the price of the underlying common stock has declined at the time of conversion, the number of shares of common stock that will be issued (and thus the dilution of existing shareholders) could increase significantly. While the Exchange believes that LTSE Listings Issuers will attract more long-term focused shareholders, not all shareholders will be long-term or have the incentive, economic or otherwise, to register their shares in record name and accrue additional voting power, and the Exchange therefore believes that, for a variety of reasons, many shareholders will never elect to do so.

<sup>85</sup> As discussed above, supra note 11, the average holding period in 2015 was approximately eight months. Although the Exchange expects a longer average holding period for LTSE Listings Issuers, the Exchange believes that assuming a full ten-year holding period for all shareholders of LTSE Listings Issuers would not be reasonable.

assumptions will result in LTSE Listings Issuers needing to obtain shareholder approval for transactions that would not be materially dilutive to existing shareholders nor would it be consistent with the objective of the rule, as it would effectively impose a Shareholder Approval Threshold of 2% instead of the 20% (if one were to calculate based solely on the Initial Voting Power of the shares at the time of their issuance). The Exchange does not believe that imposing the burden of obtaining shareholder approval (including the monetary costs as well as time and uncertainty) would be justified for transactions that the Exchange believes are unlikely to be materially dilutive to the voting power of existing shareholders.

Proposed Rule 14A.412 would take what the Exchange believes to be a more reasonable and balanced approach that is aligned with the purpose of this requirement, while still taking into account the potential increased future voting power of new shares to be issued.<sup>86</sup> Specifically, for LTSE Listings Issuers that have been listed on LTSE Listings for at least five years, the numerator of the shareholder approval calculation would be determined by multiplying the number of shares to be issued by the product of the Initial Voting Power for such shares and a “Long-Term Voting Factor,” rather than just the Initial Voting Power of such shares. The Long-Term Voting Factor is intended to estimate the extent of the increase in voting power that the new shares to be issued are likely to obtain based on the percentage of increased voting power that existing issued shares have already obtained. This percentage would be applied to the new shares to be issued, thus estimating the likely voting power that the new shares would obtain over

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<sup>86</sup> The Exchange has included examples demonstrating how an LTSE Listings Issuer would conduct the shareholder approval calculations under proposed Rule 14A.412, as compared to alternative approaches considered, in Exhibit 3.

time.

The Long-Term Voting Factor would be calculated by dividing, as of the Shareholder Approval Calculation Date (defined below), the voting power outstanding attributable to the LTSE-Listings Issuer's shares listed on LTSE Listings by the combined Initial Voting Power of those shares. This number will be equal to one if none of the LTSE Listings Issuer's shareholders have accrued additional voting power and will increase beyond one at a rate proportional to the number of additional votes attributable to LTSE Listings' long-term voting mechanics. In other words, the Long-Term Voting Factor represents the effect of long-term voting on the LTSE Listings Issuer's outstanding voting power as of the Shareholder Approval Calculation Date. For example, if an LTSE Listings Issuer has 1,000,000 shares outstanding on the Shareholder Approval Calculation Date, each with an Initial Voting Power of one vote per share, and as a result of increases in voting power over time, those shares have a total of 3,000,000 votes, the Long-Term Voting Factor would be 3.0. The formula would then assume that new shares to be issued would similarly achieve three votes per share over some period of time in the future. Given that the Exchange is unable to predict how many shareholders will actually elect to hold their shares in record ownership and thereby accrue additional voting power, or how long such shareholders would hold their shares, the Exchange believes that it is reasonable to look to the LTSE Listings Issuer's prior experience and apply that same experience to the new shares to be issued.

For LTSE Listings Issuers that have been listed on LTSE Listings for fewer than five years, the numerator in the shareholder approval calculation would be the greater of (i) the number of shares to be issued multiplied by the product of the Initial Voting Power

for such shares and the Long-Term Voting Factor or (ii) the number of shares to be issued multiplied by the Initial Voting Power of such shares further multiplied by two. This effectively applies a minimum Long-Term Voting Factor of two to LTSE Listings Issuers that have been listed on LTSE for fewer than five years, even where the LTSE Listings Issuer has an actual Long-Term Voting Factor of less than two. The Exchange believes that imposing this minimum multiple of two is appropriate because the actual Long-Term Voting Factor that these companies would have experienced during their short period of time of being public companies is likely to be lower than longer-listed issuers and may not be representative of the longer-term growth in voting power that the new shares may ultimately attain.<sup>87</sup>

As stated above, it is difficult to predict with any level of certainty how many shareholders will register their shares in record name and accrue additional voting power; however, the Exchange believes that applying a minimum multiple of two for companies that have been listed on LTSE for less than five years is reasonable and conservatively estimates the relative potential voting power of the new shares to be issued. This belief is informed by the Exchange's understanding of current shareholder turnover data, such as that in 2015 (albeit for non-LTSE Listings Issuers), investors held a stock for an average of about eight months.<sup>88</sup> A minimum Long-Term Voting Factor of two, however, the

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<sup>87</sup> If the LTSE Listings category is approved, the Exchange will periodically assess whether a five year cut-off for applying a minimum Long-Term Voting Factor and the minimum Long-Term Voting Factor of two continue to be appropriate, or whether either should be modified based on its experience with LTSE Listings Issuers. For example, the Exchange will consider when the rate of growth of the voting power of an LTSE Listings Issuer's shares typically becomes relatively stable, and at what level. The Exchange notes that any such modification would be subject to the provisions of Section 19(b)(1) under the Act and Rule 19b-4 thereunder. See 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4.

<sup>88</sup> See *Turnover Ratio of Domestic Shares*, supra note 11.

Exchange believes conservatively assumes a much longer average holding period. By way of example, an LTSE Listings Issuer would only have actually achieved a Long-Term Voting Factor of two, even after five years, if 20% of its outstanding shares were registered in the name of their shareholders on the books of the company in the first month following the issuer's IPO and such shares remained registered to those same investors without any interim transfers throughout the five-year period, and no other shares were added during that period.<sup>89</sup> Both the factor of two and the five-year threshold are being imposed on the basis of the Exchange's best judgment, which the Exchange believes balances the need to recognize that the shares' voting power can increase with the burden faced by companies seeking shareholder approval.

Proposed Rule 14A.412(b) would also clarify how to calculate the denominator in the shareholder approval calculation. IEX Rule 14.412(e)(2) currently provides that the denominator (voting power outstanding) refers to the "aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the Company's security holders for a vote." The calculation would be the same for LTSE Listings Issuers, except that proposed Rule 14A.412(b) would provide that this calculation must be made as of the Shareholder Approval Calculation Date, which would be the date on which an LTSE Listings Issuer enters into a binding agreement to conduct a transaction that may require shareholder approval under IEX Rule 14.412 (i.e., the acquisition of stock of assets of another

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<sup>89</sup> If the LTSE Listings category is approved, the Exchange will periodically assess whether the minimum Long-Term Voting Factor of two for LTSE Listings Issuers listed for less than five years should be modified based on its experience with LTSE Listings Issuers. The Exchange notes that any such modification would be subject to the provisions of Section 19(b)(1) under the Act and Rule 19b-4 thereunder. See 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4.

company or a private placement). The Exchange already expects Exchange-listed issuers to conduct this calculation as of this date;<sup>90</sup> however, because the shares of an LTSE Listings Issuer may accrue voting power over time, unlike the shares of other Exchange-listed companies, the Exchange believes it is important to explicitly specify in the LTSE Listings Rules the date on which this calculation must be performed.

The provisions described above are designed to clarify how the shareholder approval calculation under IEX Rule 14.412 would be conducted by an LTSE Listings Issuer. All other provisions of IEX Rule 14.412 would continue to apply, including, for example, the financial viability exception in IEX Rule 14.412(f).

(vii) Failure to Meet LTSE Listings Standards

Pursuant to IEX Rule 14.500(a), securities of an Exchange-listed company that do not meet the listing standards set forth in Chapters 14 and 16 of the Exchange's rulebook are subject to potential delisting from the Exchange. IEX Rule Series 14.500 sets forth procedures for the independent review, suspension and delisting of companies that fail to satisfy such standards. Proposed Rule 14A.500(a) would provide that a failure to meet the listing standards set forth in the LTSE Listings Rules would be treated as a failure to meet the listing standards set forth in Chapter 14 of the Exchange's rulebook for purposes of IEX Rule Series 14.500. As a result, the procedures set forth in the IEX Rule Series 14.500 would apply to any LTSE Listings Issuer that fails to comply with the listing standards in the LTSE Listings Rules, in addition to other applicable listing standards in the Exchange's rulebook.

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<sup>90</sup> The Exchange understands that other national securities exchanges similarly expect their listed issuers to conduct the shareholder approval calculation under those exchanges' substantially similar rules as of this date.

IEX Rule 14.501(d) provides that if a company fails to satisfy the Exchange's listing standards, the type of deficiency at issue will determine whether the company will be immediately suspended or delisted, whether the company will have an opportunity to submit a plan to regain compliance or whether the company is entitled to an automatic cure or compliance period before a delisting determination is issued. Proposed Rule 14A.500(b) would provide that a failure to satisfy one or more of the LTSE Listings Rules will be treated as a deficiency for which a company may submit a plan to regain compliance in accordance with the Exchange's rules. Like all companies listed on the Exchange, LTSE Listings Issuers will be fully subject to IEX rules related to noncompliance and delisting, as set forth in Chapter 14 of the Exchange's rules.

Proposed Rule 14A.500(c) would provide that in the event that an LTSE Listings Issuer becomes subject to delisting from LTSE Listings for failure to satisfy one or more LTSE Listings Rules but is otherwise in compliance with all other applicable listing rules of the Exchange, the Exchange may permit such issuer to remain listed on the Exchange, provided that such issuer will cease to be listed on LTSE Listings and will cease to be an LTSE Listings Issuer.<sup>91</sup> In such cases, the Exchange would assess whether the issuer is in compliance with the Exchange's continued listing criteria (other than continued listing criteria applicable solely to LTSE Listings Issuers); however, the issuer would not need to resubmit a listing application to remain listed on the Exchange.

(viii) Listing Fees for LTSE Listings Issuers

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<sup>91</sup> Regardless of whether or not the Exchange permits an LTSE Listings Issuer to remain listed on the Exchange in such circumstances, the Exchange would expect the issuer to comply with any disclosure obligations relating to the receipt of a notification of deficiency or delisting determination as set forth in IEX Rule 14.501(c) and Item 3.01 of Form 8-K with respect to the termination of its listing on LTSE Listings.

Proposed Rule Series 14A.600 is currently marked “Reserved.” The Exchange intends to file a separate proposed rule change with the Commission under Section 19 of the Act that would addresses listing fees applicable to LTSE Listings Issuers.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>92</sup> and further the objectives of Section 6(b)(5) of the Act,<sup>93</sup> in particular, in that 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.

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 LTSE Listings 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 focus by companies and investors on the long-term. Specifically, the LTSE Listings Rules are intended to better enable companies to focus on long-term value creation, potentially enhancing opportunities for capital formation, and are also intended to foster transparency and effective corporate governance, which would benefit all

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<sup>92</sup> 15 U.S.C. 78f.

<sup>93</sup> 15 U.S.C. 78f(b)(5).

investors, particularly those with a long-term focus. In addition, because listing on LTSE Listings and becoming subject to the LTSE Listings Rules is a voluntary election, the LTSE Listings Rules are not designed to permit unfair discrimination among issuers.

The following subsections provide additional detail on how the LTSE Listings Rules are designed to further the objectives of Section 6(b) of the Act.

(4) Board of Directors and Committee Requirements

As described in the Purpose section under “Board of Directors and Committee Requirements,” the proposed LTSE Listings Rules would impose additional obligations on the boards of directors and board committees of LTSE Listings Issuers. For example, the LTSE Listings Rules would require each LTSE Listings Issuer to establish a board committee dedicated to overseeing the issuer’s strategies for creating and sustaining long-term growth (i.e., an LTSP Committee). Among other things, the LTSP Committee would be required to review and approve an LTSE Listings Issuer’s LTSP Disclosures, including the disclosure of its Long-Term Growth Strategy, on at least an annual basis. The Exchange believes that these requirements would protect investors and the public interest because it would help LTSE Listings Issuers focus on long-term goals. The LTSE Listings Rules would also require LTSE Listings Issuers to establish an independent committee dedicated to selecting or recommending qualified director nominees (i.e., a nominating/corporate governance committee). In addition, the LTSE Listings Rules would require the LTSP Committee, the nominating/corporate governance committee, the compensation committee and the audit committee to report regularly to the board of directors and would require that the charters of such committees be made available on or through the LTSE Listings Issuer’s website. The Exchange believes that these

requirements are consistent with the protection of investors and the public interest because they are designed to support the governance structure objectives of LTSE Listings.

(5) Long-Term Strategy and Product Disclosures

As described in the Purpose section under “Long-Term Strategy and Product Disclosures,” the proposed LTSE Listings Rules would require LTSE Listings Issuers to provide investors with LTSP Disclosures, which are supplemental disclosures regarding an LTSE Listings Issuer’s long-term strategy and products. Specifically, the LTSP Disclosures would include disclosures relating to an LTSE Listings Issuer’s Long-Term Growth Strategy, Buybacks, Human Capital Investment and research and development. These disclosures would be in addition to the disclosures required under the Act, the Commission’s rules thereunder and the Exchange’s other rules. The Exchange believes that the LTSP Disclosures would be consistent with the aims of the existing disclosure requirements of the Act—to ensure that investors receive full and accurate information so that they can make informed investment decisions—and are thereby consistent with the protection of investors and the public interest. Specifically, the Exchange believes that the LTSP Disclosure requirements would ensure that investors receive sufficient information to evaluate a company’s progress toward meeting long-term goals. Although only LTSE Listings Issuers would be subject to these requirements, these requirements would not unfairly discriminate among issuers as only those companies electing to be subject to the LTSE Listings Rules would be subject to these requirements.

(6) Long-Term Alignment of Executive Compensation

As described in the Purpose section under “Long-Term Alignment of Executive

Compensation,” the LTSE Listings Rules would require that an LTSE Listings Issuer’s compensation committee adopt a set of executive compensation guidelines applicable to Executive Officers that are designed to link executive compensation to the long-term value of the LTSE Listings Issuer. The Exchange believes that these requirements are consistent with the protection of investors and the public interest, consistent with Section 6(b)(5) of the Act, because they would help ensure that Executive Officers are incentivized to take actions that would enhance the long-term growth of an LTSE Listings Issuer, rather than short-term results. In addition, the Exchange believes that requiring a stronger link between a company’s long-term performance and its executive compensation is designed to prevent fraudulent and manipulative acts and practices, by incentivizing executives to act in the long-term interest of LTSE Listings Issuers and limiting the extent to which executives could personally profit from efforts to effect short-term performance.

(7) Long-Term Shareholder Voting Structure

As described in the Purpose section under “Long-Term Shareholder Voting Structure,” the LTSE Listings Rules would require that LTSE Listings Issuers maintain voting rights provisions in their corporate organizational documents that provide shareholders with the ability, at the shareholders’ option, to accrue additional voting power over time. The Exchange believes that these requirements are consistent with the protection of investors and the public interest because they would provide a mechanism by which long-term shareholders can have greater influence in corporate governance. The Exchange believes that long-term shareholders are more likely than short-term investors to exercise their governance rights in a manner that prioritizes long-term growth over

short-term results, and thus it is in the public interest and furthers the protection of investors for longer-term investors to have a greater role in corporate governance. In this regard, the Commission has noted that, “when the interests of long-term investors and short-term traders conflict ... its clear responsibility is to uphold the interests of long-term investors.”<sup>94</sup> Further, the Exchange believes that, consistent with Section 6(b)(5) of the Act, the long-term voting rights provisions would not be unfairly discriminatory, as any shareholder of an LTSE Listings Issuer would have equal opportunity to elect to move their shares into registered form and accrue additional voting rights. Further, by requiring that the length of a shareholder’s ownership be consistently measured through the shareholder’s record ownership on an LTSE Listings Issuer’s books, transferred to and from “street name” through a DRP, the Exchange believes that the system will foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Act.

(8) Other Long-Term Requirements

As described in the Purpose section under “Other Long-Term Requirements,” the LTSE Listings Rules would include certain other rules designed to encourage LTSE Listings Issuers to focus on long-term value creation. For example, the LTSE Listings Rules would provide that LTSE Listings Issuers are generally prohibited from providing Earnings Guidance more frequently than annually. The Exchange believes that this requirement is consistent with the protection of investors and the public interest by enhancing the ability of companies to withstand short-term pressures and focus on long-

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<sup>94</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37500 (June 29, 2005).

term growth, and is designed to prevent fraudulent and manipulative acts and practices, such as the risk that a company could take actions to artificially meet prior Earnings Guidance.

The LTSE Listings Rules would also require that each LTSE Listings Issuer develop and publish a policy regarding an LTSE Listings Issuer's impact on the environment and community, and a policy explaining an LTSE Listings Issuer's approach to diversity. The Exchange believes that this requirement is consistent with the protection of investors and the public interest by ensuring that companies consider their impact on various stakeholders and the sustainability of their business.

The LTSE Listings Rules would require LTSE Listings Issuers to have and maintain a publicly accessible website. Documents required to be posted on this website under the LTSE Listings Rules would be required to be made available in a printable version in the English language. The Exchange believes that these requirements are consistent with the protection of investors and the public interest by ensuring that investors and the public have access to the disclosures and other documents required by the LTSE Listings Rules.

The LTSE Listings Rules would require LTSE Listings Issuers to make certain certifications to the Exchange. Specifically, LTSE Listings Issuers would be required to certify, at or before the time of listing, that all applicable listing criteria, including listing criteria under the LTSE Listings Rules, have been satisfied. In addition, the LTSE Listings Rules would require the CEO of each LTSE Listings Issuer to certify annually to the Exchange that the LTSE Listings Issuer is in compliance with proposed Rule Series 14A.400, which would contain the corporate governance requirements of the LTSE

Listings Rules, qualifying the certification to the extent necessary. The Exchange believes that these certification requirements are consistent with the protection of investors and the public interest and are designed to prevent fraudulent and manipulative acts and practices. As discussed in the Purpose section, given the unique nature of the LTSE Listings Rules, the Exchange believes that adding an annual certification requirement for LTSE Listings Issuers will assist the CEO and senior management of such issuers in ensuring compliance with LTSE Listings corporate governance requirements on an ongoing basis.

(9) Proposed Rules Clarifying Application of Existing Exchange Rules

As described in the Purpose section under “Proposed Rules Clarifying Application of Existing Exchange Rules,” the LTSE Listings Rules would include a number of rules that would clarify the application of existing Exchange rules to LTSE Listings Issuers. In general, these rules would provide that LTSE Listings Issuers must comply with both the LTSE Listings Rules as well as all other applicable rules of the Exchange. However, these rules would also explain any deviations from this general principle. For example, although the Exchange maintains listing rules relevant for various types of securities, including American Depositary Receipts, preferred stock, rights and warrants, among others, the LTSE Listings Rules would clarify that only common equity securities would be eligible for listing on LTSE Listings. Similarly, although the Exchange maintains a number of exemptions from certain corporate governance requirements for certain types of issuers (e.g., Foreign Private Issuers), certain exemptions would not be available for LTSE Listings Issuers. The Exchange believes that these rules are consistent with protecting investors and the public interest because

they would provide transparency to issuers and investors on how the Exchange's existing rules would apply to an LTSE Listings Issuer. Although these rules discriminate between issuers listed on LTSE Listings and other issuers listed on the Exchange, as well as between the type of security listed, the Exchange believes that the rules are not unfairly discriminatory, as companies are free to elect whether to list on LTSE Listings and be subject to its additional requirements.

Another example of a proposed rule that would clarify the application of existing Exchange rules to LTSE Listings Issuers is proposed Rule 14A.412, which would clarify how an LTSE Listings Issuer would conduct the shareholder approval calculation in IEX Rule 14.412. The Exchange believes that this proposed Rule would further the objectives of Section 6(b)(5) of the Act because it would ensure that the long-term voting mechanics of the LTSE Listings Rules are taken into account when conducting this calculation. As discussed in the Purpose section, the Exchange believes that the proposed approach appropriately balances the reasonably likely potential dilution to existing shareholders without imposing a disparately burdensome shareholder approval requirement on LTSE Listings Issuers. The fact that shares may accrue voting power over time means that shares may be issued that have voting power that is less than the Shareholder Approval Threshold at the time of issuance, but potentially greater than the Shareholder Approval Threshold after a certain period of time. This would increase the dilution to the shareholders that held shares prior to that issuance. Although such existing shareholders would also have the ability to accrue additional voting power, to protect such shareholders and promote just and equitable principles of trade, proposed Rule 14A.412 would require LTSE Listings Issuers to take into account the likely voting power growth

that the potential new shares would obtain over time (i.e., the Long-Term Voting Factor) when determining whether an issuance covered by IEX Rule 14.412 would require shareholder approval.

For purposes of proposed Rule 14A.412, the assumed growth in voting power for the potential new shares is equal to the actual growth in voting power that the existing shares have obtained; however, shares of relatively new LTSE Listings Issuers may not have had time to accrue additional voting power. In other words, the Long-Term Voting Factor may be lower than what it would otherwise be for an LTSE-Listings Issuer that has been listed on LTSE Listings for a longer period of time. As a result, proposed Rule 14A.412 provides that LTSE Listings Issuers that have been listed for fewer than five years must assume a minimum Long-Term Voting Factor of two.<sup>95</sup> The Exchange believes that this provision further protects investors and helps ensure that the shareholder approval calculation in IEX Rule 14.412 appropriately balances the interests of existing shareholders in having a vote on potentially dilutive share issuances with the burden of holding a shareholder meeting under circumstances when material dilution is unlikely. The Exchange believes that this approach is consistent with the policy objectives of IEX Rule 14.412 as discussed in the Purpose section.

Proposed Rule 14A.500(c) would provide that in the event that an LTSE Listings Issuer becomes subject to delisting from LTSE Listings for failure to satisfy one or more LTSE Listings Rules but is otherwise in compliance with all other applicable listing rules

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<sup>95</sup> As noted in the Purpose section, if the LTSE Listings category is approved, the Exchange will periodically assess whether the minimum Long-Term Voting Factor of two should be modified based on its experience with LTSE Listings Issuers. The Exchange notes that any such modification would be subject to the provisions of Section 19(b)(1) under the Act and Rule 19b-4 thereunder. See 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4.

of the Exchange, the Exchange may permit such issuer to remain listed on the Exchange, provided that such issuer will cease to be listed on LTSE Listings and will cease to be an LTSE Listings Issuer.<sup>96</sup> The Exchange would assess whether such an issuer is in compliance with the Exchange's continued listing criteria (other than continued listing criteria applicable solely to LTSE Listings Issuers), and this provision would allow such an issuer to remain listed on the Exchange without going through the process of reapplying for an Exchange listing, which the Exchange believes would be disruptive to the issuer and its investors. As a result, the Exchange believes that this proposed rule would further the objectives of Section 6(b)(5) of the Act by, among other things, helping to remove impediments to and perfect the mechanism of a free and open market.

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 Act<sup>97</sup> and consistent with Section 6(b)(8) of the Act<sup>98</sup> because it will provide issuers with an alternative with a differentiated offering as compared to the

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<sup>96</sup> The Exchange believes that this provision is similar to rules of other national securities exchanges that permit an issuer receiving a delisting determination to transfer to a separate segment of such exchange, subject to compliance with the continued listing standards of the separate segment. See Nasdaq FAQ Identification No. 474 (7/31/2012). Accordingly, the Exchange does not believe that this aspect of the LTSE Listings Rules raises any new or novel issues and is consistent with requirements of Section 6(b)(5) of the Act.

<sup>97</sup> 15 U.S.C. 78k-1(a)(1)(C)(ii).

<sup>98</sup> 15 U.S.C. 78f(b)(8).

other listing rules existing on other national securities exchanges and the Exchange itself. Moreover, as a new listing venue, the Exchange expects to face intense competition from existing exchanges. Consequently, the degree to which a new listing category on the Exchange could impose any burden on intermarket competition is extremely limited, and the Exchange does not believe that such listing category would impose any burden on competing venues that is not necessary or appropriate in furtherance of the purposes of the Act. In addition, there is no barrier to other exchanges adopting similar listing standards. To the extent LTSE Listings 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 proposed rule change will result in any burden on intramarket competition since becoming subject to the supplemental standards in the LTSE Listings Rules is completely voluntary. Issuers can elect to list on the Exchange without listing on LTSE Listings, or can elect to become subject to the heightened standards of the LTSE Listings Rules. The Commission and Congress have in other contexts recognized that companies may elect to be subject to greater compliance obligations than strictly required, or elect not to rely on exemptions that may otherwise be available. For example, in adopting the Jumpstart Our Business Startups Act,<sup>99</sup> Congress provided that emerging growth companies could, but were not required to, elect to rely on exemptions from various securities law requirements.<sup>100</sup> Similarly, the

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<sup>99</sup> Pub. L. No. 112-106, 126 Stat. 306 (2012).

<sup>100</sup> For example, emerging growth companies may, but “need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective...” See Securities Act Section 7(a)(2)(A); 15 U.S.C. 77g(a)(2)(A).

Commission provides that classes of companies, such as Smaller Reporting Companies, may but are not required to provide particular disclosures.<sup>101</sup> Similarly, other national securities exchanges have adopted categories for listed companies that elect to become subject to higher standards than other companies listed on such national securities exchange.<sup>102</sup>

The Exchange also does not believe that the proposal will impose any burden on competition between LTSE Listings Issuers that is not necessary or appropriate in furtherance of the purposes of the Act because all companies electing to list on LTSE Listings will be subject to the same standards. Furthermore, where appropriate, the LTSE Listings Rules are designed to provide LTSE Listings Issuers with flexibility to implement the minimum standards contained in the LTSE Listings Rules in ways that are best suited for that issuer's business.

Finally, the Exchange does not believe that the transfer agent certification requirement under proposed Rule 14A.413(b)(5) will impose a burden on competition with respect to transfer agents. While not all transfer agents will be able to implement the required software or other systems or processes, any transfer agent can choose to invest the resources necessary to implement such software or other systems or processes. Moreover, as noted above, as a new listing venue, the Exchange expects to face intense competition from existing exchanges. Consequently, the degree to which a new listing

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<sup>101</sup> See, e.g., Regulation S-K, Item 10(f); 17 CFR 229.10(f) (“[a] smaller reporting company may comply with either the requirements applicable to smaller reporting companies or the requirements applicable to other companies for each item, unless the requirements for smaller reporting companies specify that smaller reporting companies must comply with the smaller reporting company requirements”).

<sup>102</sup> See generally Nasdaq Rule 5000 series (containing more stringent listing standards for issuers listed on the “Nasdaq Global Select Market” as compared to those listed on the “Nasdaq Global Market” or the “Nasdaq Capital Market”).

category on the Exchange could impose any burden on competition among transfer agents is extremely limited, and the Exchange does not believe that such listing category would impose any burden on transfer agents 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2018-06 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-IEX-2018-06. This file number should be included in the subject line if email 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet website at [www.iextrading.com](http://www.iextrading.com). 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-IEX-2018-06 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.<sup>103</sup>

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<sup>103</sup> 17 CFR 200.30-3(a)(12).

### Exhibit 3 – Examples Applying the Proposed Shareholder Approval Calculations

As discussed in Section 3.a.(3)(F)(vi) of the Purpose section, IEX Rule 14.412 requires that a company listed on the Exchange receive shareholder approval in advance of the “potential issuance of common stock” where the “common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance...” (the “Shareholder Approval Threshold”). By its terms, IEX Rule 14.412 therefore could be read to look only to the voting power of the shares upon issuance.<sup>1</sup> However, proposed Rule 14A.412 would require LTSE Listings Issuers to assign a greater level of voting power to the newly issued shares than the Initial Voting Power of those shares, given that shares listed on LTSE Listings may accrue additional voting power over time (“long-term voting”).

The following examples illustrate how an LTSE Listings Issuer would perform the shareholder approval calculations set forth in proposed Rule 14A.412. For comparison purposes, the examples also demonstrate how an LTSE Listings Issuer and a non-LTSE Listings Issuer (i.e., an issuer without long-term voting provisions in its organizational documents) would conduct the shareholder approval calculations in the absence of proposed Rule 14A.412 (i.e., based solely on existing IEX Rules 14.412(a)(1)(A) or 14.412(d)(1), as applicable). The examples only consider whether shareholder approval would be required based on the voting power of the shares to be issued, not based on the increase in shares of the issuer.

#### Example 1. Initial Voting Power of 1 – Issuer Listed for at Least Five Years

Example 1 assumes two issuers, a non-LTSE Listings Issuer and an LTSE-Listings Issuer, that are each considering issuing 15,000 shares of common stock with 100,000 shares of common stock already outstanding as of the Shareholder Approval Calculation Date (“SACD”). The Initial Voting Power of these shares is one. The voting power per share would not change over time for the non-LTSE Listings Issuer, so for this company, the voting power outstanding as of the SACD is 100,000. However, we assume that the outstanding voting power of the LTSE Listings Issuer has increased to 300,000.<sup>2</sup> These assumptions are summarized in the table below:

	Non-LTSE Listings Issuer	LTSE Listings Issuer
Size of proposed issuance	15,000	15,000

<sup>1</sup> See, e.g., IEX Rule 14.412(a)(1)(A).

<sup>2</sup> There are various scenarios that could result in total voting power of 300,000, depending on the number of shares registered in record name and the duration of time the shares are held in such form. For example, assuming the voting rights of shares held in record ownership increase at one additional vote per year, if 25,000 of the shares were held in record ownership for eight years, the voting power of those shares would increase to 225,000 votes, while the remaining 75,000 shares would maintain 75,000 votes, resulting in a total voting power of 300,000.

Initial Voting Power	1	1
Number of shares outstanding as of the SACD	100,000	100,000
Voting power of outstanding shares as of the SACD	100,000	300,000

#### Shareholder Approval Calculation for Non-LTSE Listings Issuer

To determine whether this issuance would be permissible without shareholder approval for the non-LTSE Listings Issuer, the issuer would divide the voting power of the potential issuance by the voting power of the shares outstanding. In this case, the calculation would be:

$$15,000 / 100,000 = 15\%$$

Because the voting power of the potential issuance would be less than 20%, this issuance would be permitted without shareholder approval under IEX Rule 14.412(a)(1)(A).

#### Shareholder Approval Calculation for LTSE Listings Issuer Without Applying Proposed Rule 14A.412

In the absence of proposed Rule 14A.412, to determine whether this issuance would be permissible for the LTSE Listings Issuer without shareholder approval, the issuer would again be required to divide the voting power of the potential issuance by the voting power of the shares outstanding. In this case, the calculation would be:

$$15,000 / 300,000 = 5\%$$

Because the voting power of the potential issuance would be less than 20%, this issuance would be permitted without shareholder approval under IEX Rule 14.412(a)(1)(A).

The foregoing calculation does not take into account the fact that shares of an LTSE Listings Issuer may accrue additional voting power over time. One potential approach for taking this into account would be to assume that all of the new shares in a proposed issuance will be registered in record name and held in that form for ten years, thereby accruing the maximum additional voting power (i.e., ten times the Initial Voting Power).<sup>3</sup> If this approach were applied, the shareholder

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<sup>3</sup> This approach would be similar to the approach required for calculating the number of shares that may be issued pursuant to an offering of future-priced securities. See, e.g., Supplementary Material to .04 to IEX Rule 14.412 (noting that, for purposes of determining the number of shares to be issued in an offering of future-priced securities, the Exchange staff will “look to the maximum potential issuance of common shares.”). However, the Exchange believes that this approach would not be appropriate for determining whether the voting power of an issuance by an LTSE Listings Issuer would exceed the Shareholder Approval Threshold. In addition to the reasons described below, the Exchange believes purchasers of  
(...continued)

approval calculation would be:

$$150,000 / 300,000 = 50\%$$

Under this approach, the issuance would not be permitted without shareholder approval, as 50% is greater than 20%. The Exchange notes that this calculation is provided solely for illustration purposes and does not reflect proposed Rule 14A.412. The Exchange believes that assuming that all of the new shares in a proposed issuance will be registered in record name and held in that form uninterrupted for ten years would not be appropriate for LTSE Listings Issuers when conducting the shareholder approval calculation because this would be extremely unlikely to occur. In addition, the Exchange believes that it would be even more unlikely for all shares of a potential issuance to accrue voting power up to the maximum amount while the shares outstanding remain static and do not accrue any additional voting power.<sup>4</sup> Accordingly, the Exchange believes that proposed Rule 14A.412 takes a more realistic and appropriate approach to determine whether shareholder approval would be required, as described below.

Shareholder Approval Calculation for LTSE Listings Issuer Under Proposed Rule 14A.412

Under proposed Rule 14A.412, the LTSE Listings Issuer would need to first determine the Long-Term Voting Factor (“LTVF”), which reflects the growth in voting power pursuant to long-term voting that the LTSE Listings Issuer has actually experienced to date.

In this case, the LTVF would be 3:

$$\frac{\text{voting power outstanding as of SACD}}{\text{shares outstanding as of SACD} * \text{Initial Voting Power}} = \frac{300,000}{100,000 * 1} = 3$$

To determine the numerator in the shareholder approval calculation, the LTSE Listings Issuer would then multiply the number of shares proposed to be issued by the initial voting power of those shares further multiplied by the LTVF. In this case, the numerator would be:

$$\text{number of shares to be issued} * \text{LTVF} * \text{Initial Voting Power} = 15,000 * 3 * 1 = 45,000$$

The LTSE Listings Issuer would then divide this number by the voting power outstanding as of

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convertible securities have a strong economic incentive to exercise their conversion rights and acquire common stock at some point in time. If the price of the underlying common stock has declined at the time of conversion, the number of shares of common stock that will be issued (and thus the dilution of existing shareholders) could increase significantly. While the Exchange believes that LTSE Listings Issuers will attract more long-term focused shareholders, not all shareholders will be long-term or have the incentive, economic or otherwise, to register their shares in record name and accrue additional voting power, and the Exchange therefore believes that, for a variety of reasons, many shareholders will never elect to do so.

<sup>4</sup> See Section 3(a)(2)(F)(vi) of the proposed rule change filing for additional background on why the Exchange believes that this approach would not be appropriate for LTSE Listings Issuers.

the SACD, as follows:

$$45,000 / 300,000 = 15\%$$

As a result, this issuance would be permissible without shareholder approval under proposed Rule 14A.412 since 15% is less than 20%.

The foregoing calculations are summarized in the table below:

	Non-LTSE Listings Issuer	LTSE Listings Issuer (No Proposed Rule 14A.412)	LTSE Listings Issuer (No Proposed Rule 14A.412 – assumption that shares to be issued would accrue max voting power)	LTSE Listings Issuer (Proposed Rule 14A.412)
Result of Shareholder Approval Calculation	15%	5%	50%	15%
Shareholder Approval Required / Not Required	Shareholder Approval Not Required	Shareholder Approval Not Required	Shareholder Approval Required	Shareholder Approval Not Required

### Example 2. Initial Voting Power of 4 – Issuer Listed for at Least Five Years

Example 2 assumes the same facts as in Example 1, except that the Initial Voting Power of the shares is assumed to be 4 rather than 1. For the LTSE Listings Issuer, the growth in voting power attributed to long-term voting power is assumed to be the same (3x); however, because the shares start at a higher Initial Voting Power, the voting power outstanding as of the SACD is assumed to be 1,200,000 rather than 300,000. These assumptions are summarized in the table below:

	Non-LTSE Listings Issuer	LTSE Listings Issuer
Size of proposed issuance	15,000	15,000
Initial Voting Power	4	4
Number of shares outstanding	100,000	100,000

as of the SACD		
Voting power of outstanding shares as of the SACD	400,000	1,200,000

Shareholder Approval Calculation for Non-LTSE Listings Issuer

To determine whether this issuance would be permissible for the non-LTSE Listings Issuer, the issuer would first need to determine the potential voting power of the potential issuance and then divide that number by the voting power of the shares outstanding. In this case, the calculation would be:

$$60,000 / 400,000 = 15\%$$

Because the voting power of the potential issuance would be less than 20%, this issuance would be permitted without shareholder approval under IEX Rule 14.412(a)(1)(A).

Shareholder Approval Calculation for LTSE Listings Issuer Without Applying Proposed Rule 14A.412

In the absence of proposed Rule 14A.412, to determine whether this issuance would be permissible for the LTSE Listings Issuer without shareholder approval, the issuer would again be required to divide the voting power of the potential issuance by the voting power of the shares outstanding. In this case, the calculation would be:

$$60,000 / 1,200,000 = 5\%$$

Because the voting power of the potential issuance would be less than 20%, this issuance would be permitted without shareholder approval under IEX Rule 14.412(a)(1)(A).

If the voting power of each share to be issued is assumed to be 40 (the maximum increase under the LTSE Listings Rules – i.e., Initial Voting Power of 4 multiplied by 10), the calculation would be:

$$600,000 / 1,200,000 = 50\%$$

Under this approach, the issuance would not be permitted without shareholder approval, as 50% is greater than 20%. The Exchange notes that this calculation is provided solely for illustration purposes and does not reflect proposed Rule 14A.412.

Shareholder Approval Calculation for LTSE Listings Issuer Under Proposed Rule 14A.412

Under proposed Rule 14A.412, the LTSE Listings Issuer would need to first determine the LTVF, which reflects the growth in vote power pursuant to long-term voting that the LTSE Listings Issuer has actually experienced to date.

In this case, the LTVF would be 3:

$$\frac{\text{voting power outstanding as of SACD}}{\text{shares outstanding as of SACD} * \text{Initial Voting Power}} = \frac{1,200,000}{100,000 * 4} = 3$$

To determine the numerator in the shareholder approval calculation, the LTSE Listings Issuer would then multiply the number of shares proposed to be issued by the Initial Voting Power of those shares further multiplied by the LTVF. In this case, the numerator would be:

$$\text{number of shares to be issued} * \text{LTVF} * \text{Initial Voting Power} = 15,000 * 3 * 4 = 180,000$$

The LTSE Listings Issuer would then divide this number by the voting power outstanding as of the SACD, as follows:

$$180,000 / 1,200,000 = 15\%$$

As a result, this issuance would be permissible without shareholder approval under proposed Rule 14A.412 since 15% is less than 20%.

The foregoing calculations are summarized in the table below:

	Non-LTSE Listings Issuer	LTSE Listings Issuer (No Proposed Rule 14A.412)	LTSE Listings Issuer (No Proposed Rule 14A.412 – assumption that shares to be issued would accrue max voting power)	LTSE Listings Issuer (Proposed Rule 14A.412)
Result of Shareholder Approval Calculation	15%	5%	50%	15%
Shareholder Approval Required / Not Required	Shareholder Approval Not Required	Shareholder Approval Not Required	Shareholder Approval Required	Shareholder Approval Not Required

**Example 3. Initial Voting Power of 1 – Issuer Listed for Fewer than 5 Years**

Example 3 assumes the same facts as in Example 1, except that the issuer in this scenario has been listed for *fewer* than 5 years and the growth in voting power attributed to long-term voting power is assumed to be 1.5x. As a result, for the LTSE Listings Issuer, the voting power of

outstanding shares as of the SACD is assumed to be 150,000. These assumptions are summarized in the table below:

	Non-LTSE Listings Issuer	LTSE Listings Issuer
Size of proposed issuance	15,000	15,000
Initial Voting Power	1	1
Number of shares outstanding as of the SACD	100,000	100,000
Voting power of outstanding shares as of the SACD	100,000	150,000

#### Shareholder Approval Calculation for Non-LTSE Listings Issuer

To determine whether this issuance would be permissible for the non-LTSE Listings Issuer, the issuer would divide the voting power of the potential issuance by the voting power of the shares outstanding. In this case, the calculation would be:

$$15,000 / 100,000 = 15\%$$

Because the voting power of the potential issuance would be less than 20%, this issuance would be permitted without shareholder approval under IEX Rule 14.412(a)(1)(A).

#### Shareholder Approval Calculation for LTSE Listings Issuer Without Applying Proposed Rule 14A.412

In the absence of proposed Rule 14A.412, to determine whether this issuance would be permissible for the LTSE Listings Issuer without shareholder approval, the issuer would again be required to divide the voting power of the potential issuance by the voting power of the shares outstanding. In this case, the calculation would be:

$$15,000 / 150,000 = 10\%$$

Because the voting power of the potential issuance would be less than 20%, this issuance would be permitted without shareholder approval under IEX Rule 14.412(a)(1)(A).

If the voting power of each share to be issued is assumed to be 10 (the maximum increase under the LTSE Listings Rules – i.e., Initial Voting Power of 1 multiplied by 10), the calculation would be:

$$150,000 / 150,000 = 100\%$$

Under this approach, the issuance would not be permitted without shareholder approval, as 100% is greater than 20%. The Exchange notes that this calculation is provided solely for illustration purposes and does not reflect proposed Rule 14A.412.

Shareholder Approval Calculation for LTSE Listings Issuer Under Proposed Rule 14A.412

Under proposed Rule 14A.412, the LTSE Listings Issuer would need to first determine the LTVF, which reflects the growth in voting power pursuant to long-term voting that the LTSE Listings Issuer has actually experienced to date.

In this case, the LTVF would be 1.5:

$$\frac{\text{voting power outstanding as of SACD}}{\text{shares outstanding as of SACD} * \text{Initial Voting Power}} = \frac{150,000}{100,000 * 1} = 1.5$$

For issuers that have been listed for fewer than five years, the numerator in the shareholder approval calculation would be the greater of (i) the number of shares to be issued multiplied by the product of the Initial Voting Power of such shares and the LTVF and (ii) the number of shares to be issued multiplied by twice the Initial Voting Power of such shares. In this case, the greater number would be the latter, as shown below:

$$15,000 * 1.5 * 1 = 22,500$$

$$15,000 * 2 * 1 = 30,000$$

$$22,500 < 30,000$$

As a result, the numerator in the shareholder approval calculation for this LTSE Listings Issuer would be 30,000.

The LTSE Listings Issuer would then divide this number by the voting power outstanding as of the SACD, as follows:

$$30,000 / 150,000 = 20\%$$

As a result, this issuance would be not permissible without shareholder approval under proposed Rule 14A.412 since 20% is equal to or in excess of 20%.

The foregoing calculations are summarized in the table below:

Non-LTSE Listings Issuer	LTSE Listings Issuer (No Proposed Rule	LTSE Listings Issuer (No Proposed Rule 14A.412 –	LTSE Listings Issuer (Proposed Rule 14A.412)

		14A.412)	assumption that shares to be issued would accrue max voting power)	
Result of Shareholder Approval Calculation	15%	10%	100%	20%
Shareholder Approval Required / Not Required	Shareholder Approval Not Required	Shareholder Approval Not Required	Shareholder Approval Required	Shareholder Approval Required

Exhibit 5 – Text of Proposed Rule Change

Proposed new language is underlined.

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CHAPTER 14A. SUPPLEMENTAL LISTING STANDARDS FOR LTSE LISTINGS ISSUERS

Rule 14A.001. Background

- (a) This Chapter 14A contains supplemental listing standards (“LTSE Listings Rules”) applicable to Companies listing on the LTSE Listings category of the Exchange (“LTSE Listings Issuers”). An LTSE Listings Issuer must qualify for listing under Chapter 14 of the IEX Rules and the LTSE Listings Rules on an initial and ongoing basis.
- (b) Notwithstanding anything to the contrary in Chapter 14 of the IEX Rules, LTSE Listings Issuers may only list common equity securities on LTSE Listings.

Rule 14A.002. Definitions

- (a) The following is a list of definitions that are used throughout the LTSE Listings Rules. Defined terms are capitalized throughout the LTSE Listings Rules. Capitalized terms not otherwise defined below have the meanings assigned to such terms in IEX Rule 14.002 (Definitions).
  - (1) “Annual Report” means, consistent with IEX Rule 14.207(d), the annual report made available to Shareholders containing audited financial statements of the LTSE Listings Issuer and its subsidiaries (which, for example, may be on Form 10-K, 20-F, 40-F or N-CSR) within a reasonable period of time following the filing of the annual report with the Commission.
  - (2) “Annual Report Supplement” is defined in LTSE Listings Rule 14A.207(b) (Obligation to Make Public Long-Term Strategy and Product Disclosures).
  - (3) “Buybacks” means issuer repurchases that are required to be disclosed pursuant to Item 703 of Regulation S-K.
  - (4) “Dually-Listed Security” is defined in LTSE Listings Rule 14A.210(a) (Dually-Listed Securities).

- (5) “Earnings Guidance” means any public disclosure made to Shareholders containing a projection of the LTSE Listings Issuer’s revenues, income (including income loss), or earnings (including earnings loss) per share.
- (6) “EPS Net of Buybacks” means the quotient calculated by dividing (i) net income (as reported in the LTSE Listings Issuer’s financial statements in its most recent Annual Report) by (ii) the sum of outstanding shares and shares that were subject to a Buyback during the prior fiscal year.
- (7) “Human Capital Investment” is defined in LTSE Listings Rule 14A.207(e) (Disclosure Related to Human Capital Investment).
- (8) “Incentive-Based Compensation” means any variable compensation, fees, or benefits that serve as an incentive or reward for performance.
- (9) “Initial Voting Power” is defined in LTSE Listings Rule 14A.413(b)(1) (Long-Term Voting).
- (10) “Leading Indicators” are quantitative metrics (financial or non-financial) that an LTSE Listings Issuer’s management uses to help forecast revenue, profit or other common after-the-event measures of long-term success. These current and predictive metrics are used by management to focus on day-to-day results as they work towards achieving the LTSE Listings Issuer’s Long-Term Growth Strategy, and provide useful information for timely decision-making in the shorter term.
- (11) “Long-Term Growth Strategy” is the strategy, as determined by management and the board of directors and approved by the LTSP Committee, that is focused on achieving long-term growth.
- (12) “LTSP Committee” is defined in LTSE Listings Rule 14A.405(c)(1) (Long-Term Strategy and Product Committee Requirements).
- (13) “LTSP Disclosures” is defined in LTSE Listings Rule 14A.207(b) (Obligation to Make Public Long-Term Strategy and Product Disclosures).
- (14) “Primary Listing Market” has the same meaning as that term is defined in the Nasdaq Unlisted Trading Privileges national market system plan (“UTP Plan”) and consistent with use of the term “listing market” in the Consolidated Quotation Service (“CQS”) and Consolidated Tape Association national market system plans (“CQ and CTA Plans”).

- (15) “Vesting Period” is defined in LTSE Listings Rule 14A.405(b)(3)(B)(ii) (Long-Term Compensation and Vesting Periods).

Rule 14A.102. Change of Control and Reverse Mergers

(a) Change of Control

- (1) For purposes of IEX Rule 14.102(a) (Business Combinations with non-IEX Entities Resulting in a Change of Control), an LTSE Listings Issuer must apply for initial listing in connection with a transaction whereby the LTSE Listings Issuer combines with, or into, an entity that is not listed on LTSE Listings, resulting in a change of control of the LTSE Listings Issuer and potentially allowing the non-LTSE Listings entity to obtain a listing on LTSE Listings. The Exchange shall consider the factors enumerated in IEX Rule 14.102(a) for determining whether a change of control has occurred. The combined entity must agree to comply with all applicable requirements of this Chapter 14A, including requirements relating to long-term voting set forth in Rule 14A.413 (Voting Rights), to apply to list as permitted by this rule.
- (2) If an initial listing following a change of control meets applicable listing requirements and the LTSE Listings Issuer is the surviving entity following the business combination, any shares of the LTSE Listings Issuer that have accrued additional voting power pursuant to Rule 14A.413(b) prior to the business combination shall retain such additional voting power following the business combination. If the initial listing meets applicable listing requirements and the non-LTSE Listings Issuer is the surviving entity or a new entity is formed following the business combination, all shares of the class or classes of securities to be listed on LTSE Listings shall have voting power equal to their Initial Voting Power at the time of such listing. Any additional voting power accrued pursuant to Rule 14A.413(b) by the shareholders of the non-surviving LTSE Listings Issuer prior to the business combination shall not be retained.

- (b) Reverse Mergers. Notwithstanding anything to the contrary in IEX Rule 14.102(c), a Reverse Merger Company shall not be eligible to submit an application for initial listing on LTSE Listings.

Rule 14A.200. General Procedures and Prerequisites for Initial and Continued Listing on LTSE Listings

A Company seeking the initial listing of one or more classes of securities on LTSE Listings

must comply with the requirements and procedures set forth in the IEX Rule Series 14.200 (General Procedures and Prerequisites for Initial and Continued Listing on the Exchange), as well as the supplemental requirements set forth in this LTSE Listings Rule 14A.200.

(a) Confidential Pre-Application Review of Eligibility

Prior to providing a clearance letter, as defined in IEX Rule 14.201 (Confidential Pre-Application Review of Eligibility), to a Company seeking the initial listing of one or more classes of securities on LTSE Listings, the Exchange must determine that the Company is eligible for listing under the LTSE Listings Rules, in addition to determining whether the Company meets the Exchange's other listing criteria.

(b) The Applications and Qualifications Process

After receiving a clearance letter pursuant to IEX Rule 14.201 (Confidential Pre-Application Review of Eligibility), a Company choosing to list as an LTSE Listings Issuer must file an original listing application. To apply for listing on LTSE Listings, a Company shall execute a Listing Agreement and a Listing Application on the forms designated by the Exchange for an LTSE Listings Issuer, which provide the information required by Section 12(b) of the Act. All forms and applications relating to listing of securities on LTSE Listings are available from the Exchange's Regulation Department.

(c) Pre-requisites for Applying to List on LTSE Listings

(1) Direct Registration Program. All securities initially listing on LTSE Listings must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act. Notwithstanding anything to the contrary in IEX Rule 14.203(c) (Direct Registration Program), all foreign issuers, as defined under Rule 3b-4 under the Act, including a Foreign Private Issuer, seeking to list on LTSE Listings are subject to this requirement.

(2) No Current Listing. At the time that a Company initially lists on the LTSE Listings, such Company may not already have any security listed for trading on the Exchange or any other national securities exchange.

(3) Fees. In lieu of paying all applicable fees as described in IEX Rule Series 14.600 (Listed Company Fees), a Company seeking the initial listing of one or more classes of securities on LTSE Listings is required to pay all applicable fees as described in LTSE Listings Rule Series 14A.600 (Listing Fees for LTSE Listings Issuers).

Rule 14A.207 Obligation to Make Public Long-Term Strategy and Product Disclosures

(a) Nothing in this LTSE Listings Rule 14A.207 shall affect the obligation of an LTSE Listings

Issuer to comply with applicable securities laws.

- (b) LTSE Listings Issuers must comply with the obligations set forth in IEX Rule 14.207 (Obligations for Companies Listed on the Exchange) and in particular IEX Rule 14.207(d) regarding Distribution of Annual and Interim Reports. LTSE Listings Issuers must also make the disclosures required by this LTSE Listings Rule 14A.207 (“LTSP Disclosures”), as described herein. The LTSP Disclosures must be made publicly available pursuant to a supplement to the LTSE Listings Issuer’s Annual Report (“Annual Report Supplement”). The Annual Report Supplement must be distributed to Shareholders along with, and in the same manner as, the LTSE Listings Issuer’s Annual Report. In addition, LTSE Listings Issuers must make the Annual Report Supplement available on or through the LTSE Listings Issuer’s website. Each LTSE Listings Issuer must include a statement in its Annual Report that the LTSP Disclosures are available in the Annual Report Supplement and provide the website address. In addition, an LTSE Listings Issuer must notify IEX Regulation once its Annual Report Supplement has been made publicly available on its website.

The LTSP Disclosures must be reviewed and approved by the LTSP Committee on at least an annual basis. Based on its review, the LTSP Committee must determine whether to recommend to the board of directors that the LTSP Disclosures be included in the Annual Report Supplement. Any board and committee approvals should be reflected in board resolutions as appropriate. All disclosures must comply with applicable securities laws, including rules and regulations pertaining to the use and reconciliation of non-GAAP financial measures and any securities law obligations regarding updating or correcting prior public statements or disclosures.

- (c) Disclosure of Long-Term Growth Strategy
- (1) Each LTSE Listings Issuer must disclose its Long-Term Growth Strategy. The disclosure of the LTSE Listings Issuer’s Long-Term Growth Strategy must include the following additional information:
- (A) How the LTSE Listings Issuer defines “long-term” for purposes of its Long-Term Growth Strategy, including a discussion of how it made this determination;
- (B) A discussion of the LTSE Listings Issuer’s Leading Indicators, as well as key milestones that the LTSE Listings Issuer aims to achieve with respect to the Leading Indicators. The LTSE Listings Issuer must also report on the progress the LTSE Listings Issuer has made in achieving these key milestones; and

- (C) A discussion of any changes to the LTSE Listings Issuer’s Long-Term Growth Strategy since the publication of the LTSE Listings Issuer’s previous Long-Term Growth Strategy. Any changes to Leading Indicators and/or key milestones must also be disclosed.
- (2) The Long-Term Growth Strategy must include details relating to different businesses of the LTSE Listings Issuer if the information is material to the overall strategy.
- (3) Notwithstanding the foregoing, nothing in this LTSE Listings Rule 14A.207(c)(3) shall require an LTSE Listings Issuer to disclose any aspect of its Long-Term Growth Strategy if the LTSP Committee determines that such disclosure is reasonably likely to result in material harm to the LTSE Listings Issuer’s competitive position, so long as the LTSE Listings Issuer complies with all applicable securities laws. A process for making this determination is required in the LTSP Committee Charter pursuant to Rule 14A.405(c)(3)(B)(iv) (LTSP Committee Charter) and any such determination shall be documented by the LTSP Committee. In addition, the LTSE Listings Issuer must disclose in its LTSP Disclosures that it is withholding certain aspects of its Long-Term Growth Strategy as a result of competitive concerns. Upon the time that any withheld information is no longer competitively sensitive, the LTSE Listings Issuer must disclose such information in its LTSP Disclosures, even if such information is no longer relevant to its current Long-Term Growth Strategy.
- (d) Disclosure Related to Buybacks
- Each LTSE Listings Issuer must disclose its EPS Net of Buybacks.
- (e) Disclosure Related to Human Capital Investment
- Each LTSE Listings Issuer must disclose the extent to which the LTSE Listings Issuer’s selling, general and administrative expenses (as reported in the LTSE Listings Issuer’s most recent Annual Report) consisted of “Human Capital Investment.” For these purposes, “Human Capital Investment” refers to the aggregate amount an LTSE Listings Issuer spends on formal training of workers in new skills to improve job performance, including, among other things, amounts spent on fees or expenses related to personnel hired or retained to train employees, training materials, tuition assistance and continuing education or similar programs. Each LTSE Listings Issuer must also disclose the amount spent on Human Capital Investment per full-time equivalent employee.
- (f) Disclosure Related to Research and Development
- Each LTSE Listings Issuer must disclose the amount of research and development spending that is short-term focused and the amount of such spending that is long-term focused. Each

LTSE Listings Issuer must also disclose how it defines short-term and long-term for these purposes and how it determined such definitions.

(g) Disclosure Requirements Upon Initial Listing

- (1) An LTSE Listings Issuer must make the disclosure required by Rule 14A.207(c)(1) (Disclosure of Long-Term Growth Strategy) publicly available on its website no later than at the time of its initial listing. Such disclosure must be made in compliance with the rules and regulations relating to the dissemination of free writing prospectuses, if applicable. This disclosure must remain on the LTSE Listings Issuer's website until the LTSE Listings Issuer is required to make the disclosure annually in its Annual Report Supplement, as set forth in Rule 14A.207(b) (Obligation to Make Public Long-Term Strategy and Product Disclosures).
- (2) After initial listing, an LTSE Listings Issuer must make the disclosure required in Rule 14A.207(d) (Disclosure Related to Buybacks), Rule 14A.207(e) (Disclosure Related to Human Capital Investment) and 14A.207(f) (Disclosure Related to Research and Development) publicly available on its website by the earlier of when the LTSE Listings Issuer files its Form 10-K or distributes its Annual Report Supplement. Thereafter, the LTSE Listings Issuer must make this disclosure annually in its Annual Report Supplement, as set forth in Rule 14A.207(b).

Rule 14A.208 Direct Registration Program

Notwithstanding anything to the contrary in IEX Rule 14.208 (Direct Registration Program), all securities listed on LTSE Listings, including securities issued by Foreign Private Issuers, must be eligible for a Direct Registration Program operated by a clearing agency that is registered under Section 17A of the Act, as required by LTSE Listings Rule 14A.200(c)(1) (Direct Registration Program).

Rule 14A.210. Dually-Listed Securities

- (a) An LTSE Listings Issuer is permitted to have a class of securities that, in connection with its initial public offering, has been approved for listing on another national securities exchange registered with the Commission pursuant to Section 6(a) of the Act ("Dually-Listed Securities").
- (b) An LTSE Listings Issuer that has Dually-Listed Securities must notify the Exchange promptly if it receives oral or written notification from the other national securities exchange on which the LTSE Listings Issuer's Dually-Listed Securities are listed that such class of listed securities has fallen below the continued listing requirements of such other market. In addition, an LTSE Listings Issuer that has Dually-Listed Securities must

promptly notify the other national securities exchange on which the LTSE Listings Issuer's Dually-Listed Securities are listed if it receives oral or written notification that such class of listed securities has fallen below the continued listing requirements of Chapter 14 or this Chapter 14A of the IEX Rules.

### **••• Supplementary Material •••**

#### .01 Impact of Non-Designation of Dually-Listed Securities

To foster competition among markets and further the development of the national market system, the Exchange shall permit Companies whose securities will be listed on another national securities exchange following its initial public offering to apply to also list those securities on LTSE Listings. The Exchange shall make an independent determination of whether such Companies satisfy all applicable listing requirements and shall require Companies to enter into a dual-listing agreement with the Exchange.

The Exchange shall continue to honor the trade halt authority of the Primary Listing Market under the CQ and CTA Plans or the UTP Plan, as applicable, pursuant to IEX Rule 11.280(g) (Authority to Initiate Trading Halts). IEX Rule 11.280 (g)(2) and (3) shall apply to Dually-Listed Securities, whereas IEX Rule 11.280(g)(1), (4), (5), (6), and (7) shall not. LTSE Listings listing fees pursuant to the LTSE Listings Rule Series 14A.600 (Listing Fees for LTSE Listings Issuers) shall continue to apply to Dually-Listed Securities. Specifically, Dually-Listed Securities shall be LTSE Listings securities for purposes of rules related to listing and delisting, and shall remain as CQS securities or UTP securities, as applicable, under all other Exchange rules.

#### Rule 14A.400 Corporate Governance Requirements

##### Rule 14A.401 Background

- (a) In addition to meeting applicable requirements in IEX Chapter 14, Companies applying to list and listed on LTSE Listings must meet the qualitative requirements outlined in this LTSE Listings Rule Series 14A.400.
- (b) LTSE Listings Issuers may request from IEX a written interpretation of the LTSE Listings Rules. A response to such request will generally be provided within one week following receipt by IEX Regulation of all information necessary to respond to the request.

#### Rule 14A.405 Board of Directors and Committees

- (a) Additional Audit Committee Requirements

In addition to the requirements in IEX Rule 14.405(c) (Audit Committee Requirements), LTSE Listings Issuers must also comply with the following audit committee requirements:

- (1) The audit committee charter must specify that the committee report regularly to the board of directors.
- (2) Each LTSE Listings Issuer must make its audit committee charter available on or through its website.

(b) Additional Compensation Committee Requirements

In addition to the requirements in IEX Rule 14.405(d) (Compensation Committee Requirements), LTSE Listings Issuers must also comply with the following Compensation Committee requirements.

- (1) Boards may allocate the responsibilities of the compensation committee to committees of their own denomination, provided that the committees are composed entirely of Independent Directors. Any such committee must have a committee charter that satisfies the requirements set forth in IEX Rule 14.405(d)(1) (Compensation Committee Charter) and LTSE Listings Rule 14A.405(b)(2) (Compensation Committee Charter Requirements).
- (2) Compensation Committee Charter Requirements
  - (A) The compensation committee charter must specify that the compensation committee must:
    - (i) report regularly to the board of directors; and
    - (ii) adopt executive compensation guidelines in accordance with LTSE Listings Rule 14A.405(b)(3) (Executive Compensation Guidelines).
  - (B) Each LTSE Listings Issuer must make its compensation committee charter available on or through its website. If any function of the compensation committee has been delegated to another committee, the charter of that committee must also be made available on or through the LTSE Listings Issuer's website.
- (3) Executive Compensation Guidelines. The compensation committee must adopt a set of executive compensation guidelines applicable to Executive Officers, designed to

link executive compensation to the long-term value of the LTSE Listings Issuer. These executive compensation guidelines must include general principles for determining the form and amount of Executive Officer compensation (and for reviewing those principles, as appropriate). In addition, the executive compensation guidelines must be consistent with the following requirements:

(A) Consistency with Long-Term Growth Strategy

- (i) The compensation committee must ensure that the time periods and performance metrics used to determine Incentive-Based Compensation for Executive Officers are consistent with the LTSE Listings Issuer's Long-Term Growth Strategy. The compensation committee may consult with the LTSP Committee in assessing whether such time periods and performance metrics are consistent with the LTSE Listings Issuer's Long-Term Growth Strategy. In addition, the LTSE Listings Issuer must disclose in its proxy statement, or Annual Report Supplement if no proxy statement is filed, whether or not the compensation committee has determined that such time periods and performance metrics are consistent with the LTSE Listings Issuer's Long-Term Growth Strategy.

(B) Long-Term Compensation and Vesting Periods

- (i) One-year minimum requirements. An LTSE Listings Issuer may not provide Executive Officers with any Incentive-Based Compensation that is tied to a financial or performance metric that is measured over a time period of less than one year or grant any time-based equity compensation that has any portion that vests in less than a year from the grant date (or from the hire date, in the case of new hire grants).
- (ii) Five-year minimum vesting period. Equity compensation awarded to Executive Officers must be subject to a period of vesting (the "Vesting Period") over at least five years. The vesting scheduling must reflect the long-term focus of the equity grant and may allow for accelerated vesting only upon the death of the Executive Officer or the occurrence of a disability that renders the Executive Officer permanently unable to remain employed at the LTSE Listings Issuer in any capacity.
- (iii) Business necessity exception. Notwithstanding LTSE Listings Rule 14A.405(b)(3)(B)(i) and (ii) above, the compensation committee may

provide alternative time periods for incentive and equity compensation if there is a business necessity and the LTSE Listings Issuer discloses and explains such business necessity in the LTSE Listings Issuer's proxy statement, or if the LTSE Listings Issuer does not file a proxy statement, in the LTSE Listings Issuer's Annual Report Supplement. In no case should the amount of equity awards granted in the aggregate that vests before the first anniversary of the grant date, or that does not meet the minimum five-year vesting schedule, exceed 5% of the total number of shares authorized for grant in any fiscal year.

- (iv) Continued vesting upon retirement and resignation. The compensation committee must determine appropriate Vesting Periods and amounts, as well as holding periods, for equity compensation awarded to Executive Officers that apply following an Executive Officer's retirement or resignation. Such Vesting Periods and amounts must be consistent with the requirements set forth in LTSE Listings Rule 14A.405(b)(3)(B)(ii) above.

(C) Exemption for Existing Agreements Prior to Listing

Notwithstanding anything herein to the contrary, any executive compensation that is subject to an existing written agreement entered into at least one year prior to the initial listing of an LTSE Listings Issuer on the Exchange need not comply with the requirements set forth in this LTSE Listings Rule 14A.405(b)(3). The use of this exemption must be disclosed in the Annual Report Supplement.

- (4) Smaller Reporting Companies. In addition to the requirements set forth IEX Rule 14.405(d)(5) (Smaller Reporting Companies), an LTSE Listings Issuer that is a Smaller Reporting Company must certify that it has adopted a formal written compensation committee charter or board resolution that specifies the content set forth in LTSE Listings Rule 14A.405(b)(2)(A)(Compensation Committee Charter Requirements) and must adopt the executive compensation guidelines described in LTSE Listings Rule 14A.405(b)(3) (Executive Compensation Guidelines).

(c) Long-Term Strategy and Product Committee Requirements

- (1) Each LTSE Listings Issuer's board of directors must maintain a committee dedicated to overseeing the LTSE Listings Issuer's strategic plans for long-term growth (the

- “LTSP Committee”). The LTSP Committee must not assume any roles or responsibilities that are required to be undertaken by the LTSE Listings Issuer’s independent board committees.
- (2) Boards may allocate the responsibilities of the LTSP Committee to committees of their own denomination, provided that the committees are composed of a majority of Independent Directors. Any such committee must (i) have a committee charter that satisfies the requirements set forth in LTSE Listings Rule 14A.405(c)(3) (LTSP Committee Charter) and (ii) comply with the committee composition requirements set forth in LTSE Listings Rule 14A.405(c)(4) (LTSP Committee Composition).
- (3) LTSP Committee Charter
- (A) Each LTSE Listings Issuer must certify that it has adopted a formal written LTSP Committee charter and that the LTSP Committee will review and reassess the adequacy of the formal written charter on an annual basis.
- (B) The charter must specify:
- (i) the scope of the LTSP Committee’s responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;
  - (ii) that the LTSP Committee must report regularly to the board of directors;
  - (iii) the LTSP Committee’s responsibility for reviewing and approving the LTSP Disclosures, including the LTSE Listings Issuer’s Long-Term Growth Strategy, on at least an annual basis and for determining whether to recommend to the board of directors that the LTSP Disclosures be included in the Annual Report Supplement;
  - (iv) a process, which should be appropriately documented, for determining whether the disclosure of any aspect of the LTSE Listings Issuer’s Long-Term Growth Strategy is reasonably likely to result in material harm to the LTSE Listings Issuer’s competitive position, in accordance with LTSE Listings Rule 14A.207(c) (Disclosure of Long-Term Growth Strategy), and that any decision to withhold such disclosure would not contravene any applicable securities laws; and
  - (v) that the LTSP Committee will consult as requested by the compensation

committee with respect to the compensation committee's determination under Rule 14A.405(b)(3)(A)(i) (Consistency with Long-Term Growth Strategy).

- (C) Each LTSE Listings Issuer must make its LTSP Committee charter available on or through its website. If any function of the LTSP Committee has been delegated to another committee, the charter of that committee must also be made available on or through the LTSE Listings Issuer's website.
- (4) LTSP Committee Composition. The LTSP Committee must include a minimum of three members of the board, a majority of whom must be Independent Directors.
- (d) Nominating/Corporate Governance Committee Requirements
- (1) Director nominees of an LTSE Listings Issuer must be either selected, or recommended for the Board's selection, by a nominating/corporate governance committee comprised solely of Independent Directors. Director nominees of an LTSE Listings Issuer may not be selected, or recommended for the Board's selection, by the Independent Directors constituting a majority of the Board's Independent Directors, as provided in IEX Rule 14.405(e)(1)(A).
- (2) Non-Independent Committee Member under Exceptional and Limited Circumstances. Notwithstanding LTSE Listings Rule 14A.405(d)(1) above, if the nominating/corporate governance committee is comprised of at least three members, one director, who is not an Independent Director as defined in IEX Rule 14.405(a)(2) and is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the nominating/corporate governance committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the LTSE Listings Issuer and its Shareholders. An LTSE Listings Issuer that relies on this exception must disclose either on or through the LTSE Listings Issuer's website or in the proxy statement for next annual meeting subsequent to such determination (or, if the LTSE Listings Issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the LTSE Listings Issuer must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.
- (3) Independent Director oversight of director nominations shall not apply in cases where

- the right to nominate a director legally belongs to a third party. However, this does not relieve an LTSE Listings Issuer's obligation to comply with the committee composition requirements under IEX Rules 14.405(c) (Audit Committee Requirements) and (d) (Compensation Committee Requirements) and LTSE Listings Rules 14A.405(c) (Long-Term Strategy and Product Committee Requirements) and (d) (Nominating/Corporate Governance Committee Requirements).
- (4) LTSE Listings Issuers may not rely on the exception set forth in IEX Rule 14.405(e)(5) (with respect to obligations that pre-date the approval date of the IEX Rule).
- (5) Boards may allocate the responsibilities of the nominating/corporate governance committee to committees of their own denomination, provided that the committees are composed entirely of Independent Directors. Any such committee must have a committee charter that satisfies the requirements of LTSE Listings Rule 14A.405(d)(6) (Nominating/Corporate Governance Charter Requirements).
- (6) Nominating/Corporate Governance Committee Charter Requirements
- (A) Each LTSE Listings Issuer must certify that it has adopted a formal written nominating/corporate governance committee charter and that the nominating/corporate governance committee will review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify:
- (i) the scope of the nominating/corporate governance committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements. At a minimum, the nominating/corporate governance committee must be responsible for identifying individuals qualified to become board members, consistent with criteria approved by the board, and selecting, or recommending that the board select, the director nominees for the next annual meeting of shareholders; developing and recommending to the board a set of corporate governance guidelines applicable to the corporation; and overseeing the evaluation of the board and management;
- (ii) that the nominating/corporate governance committee must report regularly to the board of directors; and

- (iii) that the nominating/corporate governance committee has the sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve the search firm's fees and other retention terms.
- (B) Each LTSE Listings Issuer must make its nominating/corporate governance charter available on or through its website. If any function of the nominating/corporate governance committee has been delegated to another committee, the charter of that committee must also be made available on or through the LTSE Listings Issuer's website.

### **••• Supplementary Material •••**

#### .01 Committee Delegations, Third-Party Nominations and Other Committees

This Supplementary Material .01 to LTSE Listings Rule 14A.405 applies in lieu of Supplementary Material .08 to IEX Rule 14.405 (Independent Director Oversight of Director Nominations).

The charters of each committee of LTSE Listing Issuers may address the authority of the committee to delegate to subcommittees of the committee, provided that any such subcommittee must meet the applicable committee composition requirements with respect to independence.

Independent Director oversight of nominations enhances investor confidence in the selection of well-qualified director nominees, as well as independent nominees, as required by the rules.

This LTSE Listings Rule does not apply in cases where the right to nominate a director legally belongs to a third party. For example, investors may negotiate the right to nominate directors in connection with an investment in the Company, holders of preferred stock may be permitted to nominate or appoint directors upon certain defaults, or the LTSE Listings Issuer may be a party to a shareholder's agreement that allocates the right to nominate some directors. Because the right to nominate directors in these cases does not reside with the LTSE Listings Issuer, Independent Director approval would not be required.

#### Rule 14A.407. Exemptions from Certain Corporate Governance Requirements

- (a) Exemptions to the Corporate Governance Requirements. An LTSE Listings Issuer may not rely on the exemptions set forth in IEX Rule 14.407(a) (Exemptions to the Corporate Governance Requirements) with respect to the requirements of Chapter 14A. A Foreign Private Issuer who meets the requirements of Chapter 14A, including the requirement to distribute an Annual Report Supplement, may list on LTSE Listings.
- (b) Phase-in Schedules. In addition to the phase-in schedules set forth in IEX Rule 14.407(b)

(Phase-In Schedules) an LTSE Listings Issuer that is listing in connection with its initial public offering or that is emerging from bankruptcy shall be permitted to phase in its compliance with the committee composition requirements set forth in LTSE Listings Rule 14A.405(c)(4) (LTSP Committee Composition) as follows: (1) at least one member of the LTSP Committee must be an Independent Director at the time of listing, and (2) a majority of the members of the LTSP Committee must be Independent Directors within 90 days of listing.

(c) How the Rules Apply to a Controlled Company

- (1) In addition to the exemptions in IEX Rule 14.407(c) (How the Rules Apply to a Controlled Company), an LTSE Listings Issuer that is a Controlled Company is exempt from the requirements of 14A.405(b) (Additional Compensation Committee Requirements) and 14A.405(d) (Nominating/Corporate Governance Committee Requirements), except for Rule 14A.405(b)(3) (Executive Compensation Guidelines).
- (2) To the extent that a Controlled Company does not have a compensation committee, the Independent Directors on the LTSP Committee, or the Independent Directors of the board, must be responsible for 14A.405(b)(3) (Executive Compensation Guidelines).

Rule 14A.409 Corporate Governance Guidelines.

- (a) Each LTSE Listings Issuer must adopt and disclose corporate governance guidelines that address the following subjects as described below:
  - (1) Director qualification standards. These standards should, at minimum, reflect the independence requirements set forth in IEX Rule 14.405 (Board of Directors and Committees). LTSE Listings Issuers may also address other substantive qualification requirements, including policies limiting the number of boards on which a director may sit, and director tenure, retirement and succession.
  - (2) Director responsibilities. These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.
  - (3) Director access to management. Directors should have access to management to fulfill their duties in overseeing the LTSE Listings Issuer. LTSE Listings Issuers may specify a protocol to facilitate these communications and, in such cases, should adopt guidelines that would ensure directors have regular access to senior executives and

- other members of management, which could be in the form of a mentorship program between directors and executives.
- (4) Director compensation. Director compensation guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles, as appropriate). The board should be aware that questions as to directors' independence may be raised when directors' fees and emoluments exceed what is customary. Similar concerns may be raised when the LTSE Listings Issuer makes substantial charitable contributions to organizations in which a director is affiliated, or enters into consulting contracts with (or provides other indirect forms of compensation to) a director. The board should critically evaluate each of these matters when determining the form and amount of director compensation, and the independence of a director. The board of directors must ensure that a significant portion, no less than 40%, of director compensation is paid in stock-based compensation tied to long-term periods. The LTSE Listings Issuer must disclose in its corporate governance guidelines what it considers to be "long-term" for this purpose. In addition, LTSE Listings Issuers must adopt director stock ownership guidelines, which must include minimum ownership requirements that can be met over the length of board service. LTSE Listings Issuers should also consider other means of aligning director compensation with long-term strategies, including deferred share delivery, vesting periods or similar measures.
- (5) Director orientation and continuing education.
- (6) Management succession. Succession planning should include policies and principles for chief executive officer selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the chief executive officer.
- (7) Annual performance evaluation of the board. The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively.
- (b) An LTSE Listings Issuer must make its corporate governance guidelines available on or through its website. An LTSE Listings Issuer must disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its Annual Report, that its corporate governance guidelines are available on or through its website and provide the website address. In addition, each LTSE Listings Issuer must notify IEX Regulation once its

corporate governance guidelines have been made publicly available on its website.

#### Rule 14A.410 Notification of Noncompliance

An LTSE Listings Issuer must provide the Exchange with prompt notification after an Executive Officer of the LTSE Listings Issuer becomes aware of any noncompliance by the LTSE Listings Issuer with the requirements of this LTSE Listings Rule Series 14A.400.

#### Rule 14A.412. Shareholder Approval

- (a) Numerator in Shareholder Approval Calculation. For purposes of determining whether Shareholder approval is required under IEX Rule 14.412 (Shareholder Approval) for LTSE Listings Issuers, the voting power of common stock to be issued by an LTSE Listings Issuer that will be listed on LTSE Listings or that is of the same class of securities that are listed on LTSE Listings shall be determined as follows:
- (1) For LTSE Listings Issuers that have been listed on LTSE Listings for at least five years, the number of shares to be issued multiplied by the product of the Initial Voting Power of such shares and the Long-Term Voting Factor.
  - (2) For LTSE Listings Issuers that have been listed on LTSE Listings for fewer than five years, the greater of (i) the number of shares to be issued multiplied by the product of the Initial Voting Power of such shares and the Long-Term Voting Factor and (ii) the number of shares to be issued multiplied by twice the Initial Voting Power of such shares.
- (b) Denominator in Shareholder Approval Calculation. For purposes of determining whether Shareholder approval is required under IEX Rule 14.412 (Shareholder Approval) for LTSE Listings Issuers, the following provision shall apply in lieu of IEX Rule 14.412(e)(2):
- (1) Voting power outstanding as used in IEX Rule 14.412 refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the Company's security holders for a vote, as of the Shareholder Approval Calculation Date.
- (c) Definitions. For purposes of this LTSE Listings Rule 14A.412, the following terms shall have the meanings set forth below:
- (1) "Long-Term Voting Factor" means the quotient calculated by dividing (i) the voting power outstanding as of the Shareholder Approval Calculation Date by (ii) the number of shares outstanding as of the Shareholder Approval Calculation Date

multiplied by the Initial Voting Power of those outstanding shares.

- (2) “Shareholder Approval Calculation Date” means the date on which an LTSE Listings Issuer enters into a binding agreement to conduct a transaction that may require shareholder approval under IEX Rule 14.412 (Shareholder Approval).

#### Rule 14A.413 Voting Rights

- (a) In addition to complying with the obligations set forth in IEX Rule 14.413 (Voting Rights), LTSE Listings Issuers must also comply with the voting rights requirements set forth in this LTSE Listings Rule 14A.413. For the avoidance of doubt, an LTSE Listings Issuer will not be considered to disparately reduce or restrict the voting rights of existing Shareholders in contravention of IEX Rule 14.413 (Voting Rights) solely as a result of complying with the long-term voting provisions of LTSE Listings Rule 14A.413(b) (Long-Term Voting) where compliance with those provisions was required under the LTSE Listings Issuer’s governance documents as of the time of its initial public offering.

- (b) Long-Term Voting

Each LTSE Listings Issuer’s governance documents must include voting rights provisions with respect to the securities listed on the Exchange that are consistent with the following requirements:

- (1) The LTSE Listings Issuer must determine the initial number of votes to which a Shareholder is entitled per share of the LTSE Listings Issuer’s common stock owned as of the date of the LTSE Listings Issuer’s initial listing on the Exchange (“Initial Voting Power”).
- (2) A Shareholder that is the beneficial owner of shares of an LTSE Listings Issuer may increase the voting power of their shares following the date of the LTSE Listings Issuer’s initial listing on the Exchange by registering such shares in their name as record holders on the books of the LTSE Listings Issuer, including through the use of a Direct Registration Program, and continuing to hold such shares as record holders over a period of time.
- (3) For each full calendar month following the date of the Company's initial listing on the Exchange during which a Shareholder maintains continuous record ownership of shares, the voting power of such shares for so long as they are held of record by such Shareholder shall increase by one twelfth (1/12th) over their Initial Voting Power on the last business day of the month, up to an amount that is ten times their Initial

- Voting Power. For these purposes, a Shareholder will be deemed to have record ownership as of the date the Shareholder appears as the record owner on the books of the LTSE Listings Issuer directly, or through a third-party transfer agent. For these purposes, record owners of shares listed on LTSE Listings include those holding a physical paper certificate of such shares and those holding such shares through a Direct Registration Program.
- (4) If, at any time, a Shareholder transfers its shares out of record ownership (for example, to a broker through a Direct Registration Program), then on the date of such transfer, such shares will revert to entitling the Shareholder to the Initial Voting Power of such shares, as provided in this LTSE Listings Rule 14A.413(b) (Long-Term Voting).
- (5) Prior to listing securities on the LTSE Listings, a prospective LTSE Listings Issuer must obtain from its transfer agent a certification confirming that the transfer agent has software or other systems or processes available to the LTSE Listings Issuer that will enable the transfer agent and LTSE Listings Issuer to determine, as of a particular record date, the LTSE Listings Issuer's shareholder's voting rights calculated in accordance with this LTSE Listings Rule 14A.413(b) (Long-Term Voting).

**••• Supplementary Material •••**

.01 Long-Term Voting

- (a) Nothing in this LTSE Listings Rule 14A.413(b) shall prevent an LTSE Listings Issuer, so long as not inconsistent with IEX Rule 14.413, from (i) maintaining multiple classes of securities, including shares that have voting power per share in excess of the Initial Voting Power of the securities listed on the Exchange, and/or (ii) establishing or maintaining shares not listed on the Exchange as LTSE Listings-listed securities that do not meet the requirements of this LTSE Listings Rule 14A.413(b).
- (b) Notwithstanding LTSE Listings Rule 14A.413(b)(3), an LTSE Listings Issuer may provide that the voting power of shares held in record name increase at a rate greater than the rate set forth in LTSE Listings Rule 14A.413(b)(3), provided that the voting power of such shares may not increase to a level that exceeds ten times their Initial Voting Power.
- (c) The purpose of this LTSE Listings Rule 14A.413(b) is to incentivize those beneficial owners with voting and investment discretion over an LTSE Listings Issuer's shares to become long-term Shareholders, provide a mechanism by which such long-term Shareholders can evidence their long-term ownership (i.e., by becoming record holders),

- and increase the relative role of such long-term Shareholders in the governance of the LTSE Listings Issuer. An LTSE Listings Issuer may provide in its governance documents that if its board of directors adopts a resolution reasonably determining that, notwithstanding technical compliance with the provisions of the LTSE Listings Issuer's governance documents relating to the increasing voting power of long-term Shareholders and continuity of record ownership, there has in fact been a change in beneficial ownership with respect to shares held of record that would evade the purposes of this LTSE Listings Rule 14A.413(b), such shares may be treated as being entitled only to their Initial Voting Power. Any LTSE Listings Issuer that provides in its governance documents that the board of directors may make such a determination, must also adopt in its governance documents a process for any Shareholders directly affected by such determination to challenge such determination. This process must provide the affected Shareholders with an opportunity to present additional information demonstrating that a change of beneficial ownership has not occurred.
- (d) Ordinarily, for purposes of LTSE Listings Rule 14A.413(b), a change in the record holder of shares demonstrates that a change in beneficial ownership of such shares has occurred. As a result, a change in the record holder of shares will cause such shares to revert to entitling the Shareholder to the Initial Voting Power of such shares. However, an LTSE Listings Issuer may adopt a process by which a Shareholder may demonstrate that, notwithstanding a technical change in record ownership, a change in beneficial ownership has not occurred. This may occur, for example, where a Shareholder changes its legal name or where ownership of Shares by an individual is re-titled to reflect joint ownership with a spouse.
- (e) In the case of a Shareholder that holds its shares in an LTSE Listings Issuer through a custodian consistent with applicable regulatory requirements, an LTSE Listings Issuer may recognize such Shareholder as a holder of record solely for purposes of this Rule 14A.413(b), therefore entitled to increase its voting power over time, so long as the custodian becomes the shareholder of record in a manner that indicates the name of the ultimate beneficial owner. By way of example, if Investment Fund ABC maintains custody of its assets through Bank XYZ, Investment Fund ABC may be recognized as the record holder of the shares of an LTSE-Listed Company solely for purposes of this rule if Bank XYZ registers the shares on the books of the LTSE-Listed Issuer as being owned by "Bank XYZ, as custodian for Investment Fund ABC."
- (f) Pursuant to IEX Rule 14.413 (Voting Rights), an LTSE Listings Issuer is prohibited from disparately reducing or restricting the voting rights of existing Shareholders by issuing a new class of super-voting stock. For purposes of LTSE Listings, a class of securities shall be considered super-voting stock if (i) the Initial Voting Power of such class of securities

exceeds the Initial Voting Power of any of the LTSE Listings Issuer's existing classes of common stock listed on LTSE Listings or (ii) the rate at which the voting power of such class may increase over time is greater than the corresponding rate for any of the LTSE Listings Issuer's existing classes of common stock listed on LTSE Listings.

#### Rule 14A.420. Earnings Guidance

- (a) LTSE Listings Issuers may not provide Earnings Guidance more frequently than annually; provided that, an LTSE Listings Issuer is permitted to update previously issued Earnings Guidance if it believes that such disclosure would be required by IEX Rule 14.207(b)(1) (Disclosure of Material Information), other applicable law or to make the previously issued Earnings Guidance not misleading, and provided further that nothing in this Rule 14A.420(a) shall impact or limit an LTSE Listings Issuer's obligation to comply with any applicable reporting obligation under applicable securities laws.
- (b) Any Earnings Guidance, including updates and supplementary disclosure related to Earnings Guidance, shall be considered material information for purposes of IEX Rule 14.207(b)(1) (Disclosure of Material Information) and, as a result, when an LTSE Listings Issuer provides or updates its Earnings Guidance, the LTSE Listings Issuer must comply with the disclosure and notification requirements set forth therein.

#### Rule 14A.425. Long-Term Stakeholder Policies

- (a) LTSE Listings Issuers must develop and publish the following policies:
  - (1) a policy regarding the LTSE Listings Issuer's impact on the environment and community; and
  - (2) a policy explaining the LTSE Listings Issuer's approach to diversity throughout the LTSE Listings Issuer.
- (b) The LTSE Listings Issuer must review the policies required by this LTSE Listings Rule 14A.425 at least annually and make such policies available on or through its website. In addition, each LTSE Listings Issuer must disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its Annual Report Supplement, that these policies are available on or through its website and provide the website address.

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#### .01 Location of Stakeholder Policies

The stakeholder policies required by LTSE Listings Rule 14A.425 may be included as part of

other LTSE Listings Issuer policies or reports.

#### Rule 14A.430. Website Requirements

LTSE Listings Issuers must have and maintain a publicly accessible website. To the extent that an LTSE Listings Issuer is required under any applicable provision of these Listing Rules to make documents available on or through its website, such website must be accessible from the United States, must clearly indicate in the English language the location of such documents on the website and such documents must be available in a printable version in the English language.

#### Rule 14A.435. Certification Requirements

- (a) LTSE Listings Issuers must certify, at or before the time of listing, that all applicable listing criteria have been satisfied, as set forth in IEX Rule 14.202(b) (The Applications and Qualifications Process).
- (b) Each LTSE Listings Issuer chief executive officer must certify annually to the Exchange that: (i) the LTSE Listings Issuer is in compliance with the LTSE Listings Rule Series 14A.400, qualifying the certification to the extent necessary and (ii) the LTSE Listings Issuer has designated an employee responsible for ensuring that the voting power of the LTSE Listings Issuer's securities is determined in accordance with LTSE Listings Rule 14A.413(b) (Long-Term Voting).

#### Rule 14A.500 Failure to Meet LTSE Listings Listing Standards

- (a) A failure to meet the listing standards set forth in these LTSE Listings Rules will be treated as a failure to meet the listing standards set forth in Chapter 14 of the IEX Rules, for purposes of the IEX Rule Series 14.500. As a result, the procedures for the independent review, suspension and delisting of Companies that fail to satisfy one or more standards for continued listing will apply to any LTSE Listings Issuer that fails to comply with listing standards in the LTSE Listings Rules, in addition to the listing standards in Chapter 14 of the IEX Rules.
- (b) A failure to satisfy one or more LTSE Listings Rules will be treated as a deficiency for which a Company may submit a plan to regain compliance for Staff review under IEX Rule 14.501(d)(2) (Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review). Absent an extension, such a plan must be provided within 45 calendar days of Staff's notification of deficiency in accordance with IEX Rule 14.501(d)(2)(C) (Timeline for Submission of Compliance Plans).

- (c) In the event that an LTSE Listings Issuer becomes subject to delisting for failure to satisfy one or more LTSE Listings Rules but is otherwise in compliance with all other applicable listing rules of the Exchange, the Exchange may permit such issuer to remain listed on the Exchange, provided that such issuer will cease to be listed on the LTSE Listings category of the Exchange and will cease to be an LTSE Listings Issuer.

Rule 14A.600 Listing Fees for LTSE Listings Issuers

Reserved.

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