

## **CHAPTER 14. LTSE LISTING RULES**

### **Rule 14.001. The Qualification, Listing, and Delisting of Companies**

Chapter 14 contains rules related to the qualification, listing and delisting of Companies on the Exchange

The LTSE Rule Series 14.100 discusses LTSE's general regulatory authority. The LTSE Rule Series 14.200 sets forth the procedures and prerequisites for gaining a listing on LTSE, as well as the disclosure obligations of listed Companies. The LTSE Rule Series 14.300 contains the specific quantitative listing requirements. The corporate governance requirements are contained in the LTSE Rule Series 14.400. The consequences of a failure to meet LTSE's listing standards are contained in the LTSE Rule Series 14.500. Company listing fees are described in the LTSE Rule Series 14.600.

The Exchange exercises other authorities important to listed Companies pursuant to its Rules. For example, the Exchange may close markets upon request of the SEC (see LTSE Rule 11.110(c)). It may also halt the trading of a Company's securities under certain circumstances and pursuant to established procedures (see LTSE Rule 11.282). These authorities are exercised primarily by LTSE Regulation and are contained in Chapter 11.

LTSE and the Financial Industry Regulatory Authority, Inc. ("FINRA") are parties to a regulatory contract pursuant to which FINRA has agreed to perform certain functions described in the LTSE Rules and on behalf of LTSE. Notwithstanding the fact that LTSE has entered into the regulatory contract with FINRA to perform some of LTSE's functions, LTSE shall retain ultimate legal responsibility for, and control of, such functions.

*(Amended by SR-LTSE-2019-03 eff. October 18, 2019)*

### **Rule 14.002. Definitions**

(a) The following is a list of definitions used throughout the Exchange's Listing Rules. This LTSE Rule also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

- (1) "Act" means the Securities Exchange Act of 1934.
- (2) "Bid Price" means the closing bid price.
- (3) "Best efforts offering" means an offering of securities by members of a selling group under an agreement that imposes no financial commitment on the

## **Rule 14.002. Definitions**

members of such group to purchase any such securities except as they may elect to do so.

- (4) "Cash flows" is defined in LTSE Rule 14.302(b).
- (5) "Company" means the issuer of a security listed or applying to list on the Exchange. For purposes of Chapter 14, the term "Company" includes an issuer that is not incorporated, such as, for example, a limited partnership.
- (6) "Country of Domicile" means the country under whose laws a Company is organized or incorporated.
- (7) "Covered Security" means a security described in Section 18(b) of the Securities Act of 1933.
- (8) "Direct Registration Program" means any program by a Company, directly or through its transfer agent, whereby a Shareholder may have securities registered in the Shareholder's name on the books of the Company or its transfer agent without the need for a physical certificate to evidence ownership.
- (9) "EDGAR System" means the SEC's Electronic Data Gathering, Analysis, and Retrieval system.
- (10) "ESOP" means employee stock option plan.
- (11) "Executive Officer" is defined in LTSE Rule 14.405(a)(1).
- (12) "Filed with the Exchange" means submitted to the Exchange directly or filed with the Commission through the EDGAR System.
- (13) "Firm Commitment Offering" means an offering of securities by participants in a selling syndicate under an agreement that imposes a financial commitment on participants in such syndicate to purchase such securities.
- (14) "Family Member" is defined in LTSE Rule 14.405(a)(2).
- (15) "Foreign Private Issuer" shall have the same meaning as under Rule 3b-4 under the Act.
- (16) "LTSE Listed security" means a security listed on the Exchange.
- (17) "LTSE Company" means the issuer of a security listed on the Exchange.
- (18) "Independent Director" is defined in LTSE Rule 14.405(a)(2).

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- (19) "Listed Securities" means securities listed on the Exchange or another national securities exchange.
- (20) "Market Maker" means a dealer that, with respect to a security, holds itself out (by entering quotations into the Exchange) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.
- (21) "Market Value" means the consolidated closing bid price multiplied by the measure to be valued (e.g., a Company's Market Value of Publicly Held Shares is equal to the consolidated closing bid price multiplied by a Company's Publicly Held Shares).
- (22) "Member" means a broker or dealer admitted to membership in the Exchange.
- (23) "Other Regulatory Authority" means: (i) in the case of a bank or savings authority identified in Section 12(i) of the Act, the agency vested with authority to enforce the provisions of Section 12 of the Act; or (ii) in the case of an insurance company that is subject to an exemption issued by the Commission that permits the listing of the security, notwithstanding its failure to be registered pursuant to section 12(b), the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary state.
- (24) "Primary Equity Security" means a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts ("ADRs") or Shares ("ADSs").
- (25) "Publicly Held Shares" means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.
- (26) "Public Holders" means holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.
- (27) "Reverse Merger" means 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. However, a Reverse Merger does not include a business combination described in LTSE

## **Rule 14.002. Definitions**

Rule 14.102(a). In determining whether a Company is a shell company, the Exchange will look to a number of factors, including but not limited to: whether the Company is considered a "shell company" as defined in Rule 12b-2 under the Act; what percentage of the Company's assets are active versus passive; whether the Company generates revenues, and if so, whether the revenues are passively or actively generated; whether the Company's expenses are reasonably related to the revenues being generated; how many employees support the Company's revenue-generating business operations; how long the Company has been without material business operations; and whether the Company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

- (28) "Round Lot" or "Normal Unit of Trading" means 100 shares of a security unless, with respect to a particular security, the Exchange determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Exchange symbol.
- (29) "Round Lot Holder" means a holder of a Normal Unit of Trading. The number of beneficial holders will be considered in addition to holders of record.
- (30) "Shareholder" means a record or beneficial owner of a security listed or applying to list. For purposes of Chapter 14, the term "Shareholder" includes, for example, a limited partner, the owner of a depository receipt, or unit.
- (31) "Substantial Shareholder" is defined in LTSE Rule 14.412(e)(3).
- (32) "Substitution Listing Event" means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.
- (33) "Total Holders" means holders of a security that includes both beneficial holders and holders of record.

**Rule Series 14.100. LTSE's Regulatory Authority**

**Rule 14.101. LTSE's Regulatory Authority**

The Exchange is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The Exchange stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. Exchange Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives.

The Exchange, therefore, in addition to applying the enumerated criteria set forth in Chapter 14, has broad discretionary authority over the initial and continued listing of securities on the Exchange in order to maintain the quality, transparency and integrity of and public confidence in its market; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to protect investors and the public interest; and to protect the safety and security of the Exchange and its employees. The Exchange may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange. In the event that the Exchange Staff makes a determination to suspend or deny continued listing pursuant to its discretionary authority, the Company may seek review of that determination through the procedures set forth in the LTSE Rule Series 14.500.

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**\* \* \* \* \* Supplementary Material \* \* \* \* \***

**.01 Use of Discretionary Authority**

*To further Companies' understanding of this LTSE Rule, the Exchange has adopted this Supplementary Material .01 as a non-exclusive description of the circumstances in which the Rule is generally invoked.*

*The Exchange may use its authority under this LTSE Rule to deny initial or continued listing to a Company when an individual with a history of regulatory misconduct is associated with the Company. Such individuals are typically an officer, director, Substantial Shareholder (as defined in LTSE Rule 14.412(e)(3)), or consultant to the Company. In making this determination, the Exchange will consider a variety of factors, including:*

- (a) the nature and severity of the conduct, taken in conjunction with the length of time since the conduct occurred;*
- (b) whether the conduct involved fraud or dishonesty;*
- (c) whether the conduct was securities-related;*

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- (d) *whether the investing public was involved;*
- (e) *how the individual has been employed since the violative conduct;*
- (f) *whether there are continuing sanctions (either criminal or civil) against the individual;*
- (g) *whether the individual made restitution;*
- (h) *whether the Company has taken effective remedial action; and*
- (i) *the totality of the individual's relationship to the Company, giving consideration to:*
  - (j) *the individual's current or proposed position;*
  - (k) *the individual's current or proposed scope of authority;*
  - (l) *the extent to which the individual has responsibility for financial accounting or reporting; and*
  - (m) *the individual's equity interest.*

*Based on this review, the Exchange may determine that the regulatory history rises to the level of a public interest concern, but may also consider whether remedial measures proposed by the Company, if taken, would allay that concern. Examples of such remedial measures could include any or all of the following, as appropriate:*

- (1) *the individual's resignation from officer and director positions, and/or other employment with the Company;*
- (2) *divestiture of stock holdings;*
- (3) *terminations of contractual arrangements between the Company and the individual; or*
- (4) *the establishment of a voting trust surrounding the individual's shares.*

*The Exchange staff is willing to discuss with Companies, on a case-by-case basis, what remedial measures may be appropriate to address public interest concerns, and for how long such remedial measures would be required. Alternatively, the Exchange may conclude that a public interest concern is so serious that no remedial measure would be sufficient to alleviate it. In the event that the Exchange staff denies continued listing based on such public interest considerations, the Company may seek review of that determination through the procedures set forth in the LTSE Rule 14.500 Series. On consideration of such appeal, a listing qualifications panel comprised of persons independent of the Exchange may accept, reject or modify the staff's recommendations by imposing conditions.*

*The Exchange may also use its discretionary authority, for example, when a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws, when a Company's independent accountants issue a disclaimer opinion on financial statements required to be audited, or when financial statements do not contain a required certification.*

*In addition, pursuant to its discretionary authority, the Exchange will review the Company's past corporate governance activities. This review may include activities taking place while the Company is listed on the Exchange or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed company is no longer listed on the Exchange or such an exchange. Based on such review, and in accordance with the LTSE Rule 14.500 Series, the Exchange may take any appropriate action, including placing restrictions on or additional requirements for listing, or denying listing of a security, if the Exchange determines that there have been violations or evasions of such corporate governance standards. Such determinations will be made on a case-by-case basis as necessary to protect investors and the public interest.*

**Rule 14.102. Change of Control, Bankruptcy, Liquidation, and Reverse Mergers**

*Although the Exchange has broad discretion under this LTSE Rule to impose additional or more stringent criteria, this LTSE Rule does not provide a basis for the Exchange to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to LTSE Rules explicitly providing such authority.*

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**Rule 14.102. Change of Control, Bankruptcy, Liquidation, and Reverse Mergers**

(a) Business Combinations with non-LTSE Entities Resulting in a Change of Control.

A Company must apply for initial listing in connection with a transaction whereby the Company combines with, or into, an entity that is not an LTSE Company, resulting in a change of control of the Company and potentially allowing such entity to obtain an Exchange Listing. In determining whether a change of control has occurred, the Exchange shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the Company. The Exchange shall also consider the nature of the businesses and the relative size of the LTSE Company and the entity that is not an LTSE Company. The Company must submit an application for the post-transaction entity with sufficient time to allow the Exchange to complete its review before the transaction is completed. If the Company's application for initial listing has not been approved prior to consummation of the transaction, the Exchange will issue a Staff Delisting Determination and begin delisting proceedings pursuant to LTSE Rule 14.500.

(b) Bankruptcy and Liquidation.

The Exchange may use its discretionary authority under Chapter 14 to suspend or terminate the listing of a Company that has filed for protection under any provision of the federal bankruptcy laws or comparable foreign laws, or has announced that liquidation has been authorized by its board of directors and that it is committed to proceed, even though the Company's securities otherwise meet all enumerated criteria for continued listing on the Exchange. In the event that the Exchange determines to continue the listing of such a Company during a bankruptcy reorganization, the Company shall nevertheless be required to satisfy all requirements for initial listing, including the payment of initial listing fees, upon emerging from bankruptcy proceedings.

(c) Reverse Mergers

(1) A Company that is formed by a Reverse Merger (a "Reverse Merger Company") shall be eligible to submit an application for initial listing only if the combined entity has, immediately preceding the filing of the initial listing application:

**Rule 14.102. Change of Control, Bankruptcy, Liquidation, and Reverse Mergers**

- (A) traded for at least one year in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange, following the filing with the Commission or Other Regulatory Authority of all required information about the transaction, including audited financial statements for the combined entity; and
  - (B) maintained a closing bid price of \$4 per share or higher for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days.
- (2) In addition to satisfying all of the Exchange's other initial listing requirements, a Reverse Merger Company will only be approved for listing if, at the time of approval, it has:
- (A) timely filed all required periodic financial reports with the Commission or Other Regulatory Authority (Forms 10-Q, 10-K, or 20-F) for the prior year, including at least one annual report. The annual report must contain audited financial statements for a full fiscal year commencing after filing the information described in paragraph (1)(A) above; and
  - (B) maintained a closing bid price of \$4 per share or higher for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days prior to approval.
- (3) A Reverse Merger Company will not be subject to the requirements of this LTSE Rule if, in connection with its listing, it completes a firm commitment underwritten public offering where the gross proceeds to the Reverse Merger Company will be at least \$40 million. In addition, a Reverse Merger Company will no longer be subject to the requirements of this LTSE Rule once it has satisfied the one-year trading requirement contained in paragraph (1)(A) above and has filed at least four annual reports with the Commission or Other Regulatory Authority containing all required audited financial statements for a full fiscal year commencing after filing the information described in that paragraph. In either case described in this paragraph (3), the Reverse Merger Company must satisfy all applicable requirements for initial listing, including the minimum bid price requirement and the requirement contained in LTSE Rule 14.203(e) that the Company not be delinquent in its filing obligation with the Commission or Other Regulatory Authority.



## ***Rule 14.202. The Applications and Qualifications Process***

### **Rule Series 14.200. General Procedures and Prerequisites for Initial and Continued Listing on the Exchange.**

#### **Rule 14.201. Confidential Pre-Application Review of Eligibility**

- (a) A Company seeking the initial listing of one or more classes of securities on the Exchange must 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 notify that company in writing (the "clearance letter") that it has been cleared to submit an original listing application. A clearance letter is valid for nine months from its date of issuance. If a company does not list within that nine month period and wishes to list thereafter, the Exchange will perform another confidential listing eligibility review as a condition to the issuance of a new clearance letter. Once a Company has cleared such review, it may file an original listing application pursuant to LTSE Rule 14.202.
- (b) Preliminary discussions with the Exchange on important matters in connection with the confidential pre-application eligibility review may be undertaken by Company officials interested in listing with the assurance that careful security measures have been adopted by the Exchange to avoid revealing any confidential information which the Company may disclose.

The information needed for the purpose of conducting a confidential pre-eligibility review is set forth in LTSE Rules 14.202, 14.203, and Chapter 14 generally.

#### **Rule 14.202. The Applications and Qualifications Process**

- (a) After receiving a clearance letter pursuant to LTSE Rule 14.201, a company choosing to list must file an original listing application. To apply for listing on the Exchange, a Company shall execute a Listing Agreement and a Listing Application on the forms designated by the Exchange providing the information required by Section 12(b) of the Act.
- (b) A Company's compliance with the initial listing criteria will be determined on the basis of the Company's most recent information filed with the Commission or Other Regulatory Authority and information provided to the Exchange. The Company shall certify, at or before the time of listing, that all applicable listing criteria have been satisfied.

**Rule 14.203. Prerequisites for Applying to List on the Exchange**

- (c) A Company's qualifications will be determined on the basis of financial statements that are either: (i) prepared in accordance with U.S. generally accepted accounting principles; or (ii) reconciled to U.S. generally accepted accounting principles as required by the Commission's rules; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for Companies that are permitted to file financial statements using those standards consistent with the Commission's rules.
- (d) A Company that has applied for initial listing on the Exchange shall file with the Exchange all reports and other documents filed or required to be filed with the Commission or Other Regulatory Authority. This requirement is satisfied by publicly filing documents through the EDGAR System. All required reports must be filed with the Exchange on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with the Exchange shall contain audited financial statements.
- (e) The Exchange may request any information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company's security may be denied listing if the Company fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading.
- (f) All forms and applications relating to listing of securities on the Exchange referenced in Chapter 14 are available from the Exchange's Regulation Department.
- (g) The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.
- (h) An account of a Member that is beneficially owned by a customer (as defined in LTSE Rule 1.160) will be considered a holder of a security upon appropriate verification by the Member.
- (i) A Company may withdraw its application for initial listing at any time.

*(Amended by SR-LTSE-2019-04 eff. December 5, 2019)*

**Rule 14.203. Prerequisites for Applying to List on the Exchange**

All Companies applying to list on LTSE must meet the following prerequisites:

**Rule 14.203. Prerequisites for Applying to List on the Exchange**

- (a) Registration under 12(b) of the Act. A security shall be eligible for listing on LTSE provided that it is: (i) registered pursuant to Section 12(b) of the Act; or (ii) subject to an exemption issued by the Commission that permits the listing of the security notwithstanding its failure to be registered pursuant to Section 12(b).
- (b) Auditor Registration. Each Company applying for initial listing must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7212].
- (c) Direct Registration Program. All securities initially listing on LTSE, except securities which are book-entry only, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act. A foreign issuer, as defined under Rule 3b-4 under the Act, including a Foreign Private Issuer, shall not be subject to this requirement if it submits to LTSE 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.
- (d) Fees. The Company is required to pay all applicable fees as described in LTSE Rule Series 14.600.
- (e) Good Standing. No security shall be approved for listing that is delinquent in its filing obligation with the Commission or Other Regulatory Authority or suspended from trading by the Commission pursuant to Section 12(k) of the Act or by the appropriate regulatory authorities of the Company's country of domicile.
- (f) Exchange Certification. Upon approval of a listing application, the Exchange shall certify to the Commission, pursuant to Section 12(d) of the Act and the rules thereunder, that it has approved the security for listing and registration. Listing can commence only upon effectiveness of the security's registration pursuant to Section 12(d).
- (g) Security Depository.
  - (1) "Securities Depository" means a securities depository registered as a clearing agency under Section 17A of the Act.
  - (2) For initial listing, a security shall have a CUSIP number or foreign equivalent identifying the securities included in the file of eligible issues maintained by a Securities Depository in accordance with the rules and procedures of such securities depository. This subparagraph shall not apply to a security if the terms

**Rule 14.203. Prerequisites for Applying to List on the Exchange**

of the security do not and cannot be reasonably modified to meet the criteria for depository eligibility at all Securities Depositories.

- (3) A Security Depository's inclusion of a CUSIP number or foreign equivalent identifying a security in its file of eligible issues does not render the security "depository eligible" until:
  - (A) in the case of any new issue distributed by an underwriting syndicate on or after the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on the Exchange; or
  - (B) in the case of any new issue distributed by an underwriting syndicate prior to the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on the Exchange, such later date designated by the managing underwriter in a notification submitted to the Securities Depository; but in no event more than three (3) months after the commencement of trading in such security on the Exchange.
- (h) Limited Partnerships. No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Act), shall be eligible for listing unless:
  - (1) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Act, as it may from time to time be amended, and
  - (2) a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

The Company shall further provide an opinion of counsel stating that such broker-dealer's participation in the rollup transaction was conducted in compliance with the rules of a national securities association designed to protect the rights of limited partners, as specified in the Limited Partnership Rollup Reform Act of 1993.

In addition to any other applicable requirements, each limited partnership listed on the Exchange shall have a corporate general partner or co-general partner that satisfies the Independent Director and audit committee requirements set forth in the LTSE Rule 14.400 Series.

Note: The only currently existing national securities association subject to Section 15A(b)(12) of the Act is FINRA. Its rules designed to protect the rights of limited

**Rule 14.205. Additional Requirements for LTSE-Listed Securities Issued by the Exchange or its Affiliates**

partners, pursuant to the Limited Partnership Rollup Reform Act of 1993, are specified in FINRA Rule 2310.

- (i) Reverse Mergers. A security issued by a Company formed by a Reverse Merger shall be eligible for initial listing only if the conditions set forth in LTSE Rule 14.102(c) are satisfied.

**Rule 14.204. American Depositary Receipts**

- (a) Eligibility. American Depositary Receipts can be listed on the Exchange provided they represent shares in a non-Canadian foreign Company.
- (b) Computations. In the case of American Depositary Receipts, annual income from continuing operations and Stockholders' Equity shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S-12 under the Securities Act of 1933. The underlying security will be considered when determining annual income from continuing operations, Publicly Held Shares, Market Value of Publicly Held Shares, Stockholders' Equity, Round Lot or Public Holders, operating history, Market Value of Listed Securities, and total assets and total revenue.

**Rule 14.205. Additional Requirements for LTSE-Listed Securities Issued by the Exchange or its Affiliates**

- (a) For purposes of this LTSE Rule 14.205, the terms below are defined as follows:
  - (1) "LTSE Affiliate" means LTSE and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with LTSE, where "control" means that the one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.
  - (2) "Affiliate Security" means any security issued by an LTSE Affiliate.
- (b) Upon initial and throughout continued listing of the Affiliate Security on LTSE, LTSE shall
  - (1) file a report quarterly with the Exchange's Regulatory Oversight Committee detailing LTSE's monitoring of:
    - (A) the LTSE Affiliate's compliance with the listing requirements contained in Chapter 14; and

**Rule 14.206. Listing Requirements for Units**

- (B) the trading of the Affiliate Security, which shall include summaries of all related surveillance alerts, complaints, regulatory referrals, trades canceled or adjusted pursuant to LTSE Rule 11.270, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data of such security.
- (2) engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the LTSE Affiliate is in compliance with the listing requirements contained in Chapter 14 and promptly forward to the Exchange's Regulatory Oversight Committee a copy of the report prepared by the independent accounting firm.
- (c) In the event that LTSE determines that the LTSE Affiliate is not in compliance with any of the listing requirements contained in Chapter 14, LTSE shall file a report with the Commission within five business days of providing notice to the LTSE Affiliate of its non-compliance. The report shall identify the date of non-compliance, type of non-compliance and any other material information conveyed to the LTSE Affiliate in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the LTSE Affiliate, LTSE shall notify the Commission of such receipt, whether the plan of compliance was accepted by LTSE or what other action was taken with respect to the plan and the time period provided to regain compliance with Chapter 14, if any.

**Rule 14.206. Listing Requirements for Units**

(a) Initial and Continued Listing Requirements

- (1) All units shall have at least one equity component. All components of such units shall satisfy the requirements for initial and continued listing as LTSE Listed securities, or, in the case of debt components, satisfy the requirements of paragraph (a)(2) below.
- (2) All debt components of a unit, if any, shall meet the following requirements:
  - (A) the debt issue must have an aggregate market value or principal amount of at least \$5 million;
  - (B) in the case of convertible debt, the equity into which the debt is convertible must itself be subject to real-time last sale reporting in the United States, and the convertible debt must not contain a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or

**Rule 14.206. Listing Requirements for Units**

from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.

- (3) All components of the unit shall be issued by the same issuer. All units and issuers of such units shall comply with the initial and continued listing requirements of the Exchange.

(b) Minimum Listing Period and Notice of Withdrawal

In the case of units, the minimum listing period of the units shall be 30 days from the first day of listing, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Companies and underwriters seeking to withdraw units from listing must provide the Exchange with notice of such intent at least 15 days prior to withdrawal.

(c) Disclosure Requirements for Units

Each Exchange issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period. The issuer of a unit shall further provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant tax attributes of any component) and the ratio of the components comprising the unit. A Company shall also disclose when a component of the unit is separately listed on the Exchange. These disclosures shall be made on the Company's website, or if it does not maintain a website, in its annual report provided to unit holders. A Company shall also immediately make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing, any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such public announcement shall be made as soon as practicable in relation to the effective date of the change.

(d) Market Makers

- (1) For initial inclusion, a unit shall have at least three registered and active Market Makers.
- (2) For continued listing, a unit shall have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

**Rule 14.207. Obligations for Companies Listed on the Exchange**

**Rule 14.207. Obligations for Companies Listed on the Exchange**

(a) Obligation to Provide Information to the Exchange

- (1) The Exchange may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a Company's continued listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company may be denied continued listing if it fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading. The Company shall provide full and prompt responses to requests by the Exchange or by FINRA acting on behalf of the Exchange for information related to unusual market activity or to events that may have a material impact on trading of its securities on the Exchange.
- (2) As set forth in LTSE Rule 14.410, a 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 requirements of the Rule 14.400 Series.

(b) Obligation to Make Public Disclosure

(1) Disclosure of Material Information

Except in unusual circumstances, an Exchange-listed Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The Company shall, prior to the release of the information, provide notice of such disclosure to the Exchange's Regulation Department at least ten minutes prior to public announcement if the information involves any of the events set forth in Supplementary Material .01 to this LTSE Rule and the public release of the material information is made during System Hours (as defined in LTSE Rule 1.160). If the public release of the material information is made outside of System Hours, Exchange Companies must notify the Exchange's Regulation Department of the material information at least 10 minutes prior to the start of System Hours (as defined in LTSE Rule 1.160). As described in Supplementary Material .01 to this LTSE Rule, prior notice to the Exchange's Regulation Department must be made through the electronic disclosure submission system available at the Exchange's Web site, except in emergency situations.



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#### **(2) Disclosure of Notification of Deficiency**

As set forth in LTSE Rule 14.501(c), a listed Company that receives a notification of deficiency from the Exchange is required to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, and describing each specific basis and concern identified by the Exchange in reaching its determination that the Company does not meet the listing standard. However, note that in the case of a deficiency related to the requirement to file a periodic report contained in LTSE Rule 14.207(c)(1) or (2), the Company is required to make the public announcement by issuing a press release. As described in LTSE Rule 14.207(b)(1) above and Supplementary Material .01 below, the Company must notify the Exchange's Regulation Department about the announcement through the electronic disclosure submission system available on the Exchange's Web site, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during System Hours (as defined in LTSE Rule 1.160), the Company must notify the Exchange's Regulation Department at least ten minutes prior to the announcement. If the public announcement is made outside of System Hours (as defined in LTSE Rule 1.160), the Company must notify the Exchange's Regulation Department of the announcement at least ten minutes prior to the start of System Hours (as defined in LTSE Rule 1.160).

#### **(3) Disclosure of Third Party Director and Nominee Compensation**

Companies must disclose all agreements and arrangements in accordance with this rule by no later than the date on which the Company files or furnishes a proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F).

(A) A Company shall disclose either on or through the Company's website or in the proxy or information statement for the next shareholders' meeting at which directors are elected (or, if the Company does not file proxy or information statements, in its Form 10-K or 20-F), the material terms of all agreements and arrangements between any director or nominee for director, and any person or entity other than the Company (the "Third Party"), relating to compensation or other payment in connection with such person's candidacy or service as a director of the Company. A Company need not disclose pursuant to this rule agreements and arrangements that: (i) relate only to

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reimbursement of expenses in connection with candidacy as a director; (ii) existed prior to the nominee's candidacy (including as an employee of the other person or entity) and the nominee's relationship with the Third Party has been publicly disclosed in a proxy or information statement or annual report (such as in the director or nominee's biography); or (iii) have been disclosed under Item 5(b) of Schedule 14A of the Act or Item 5.02(d)(2) of Form 8-K in the current fiscal year. Disclosure pursuant to Commission rule shall not relieve a Company of its annual obligation to make disclosure under subparagraph (B).

- (B) A Company must make the disclosure required in subparagraph (A) at least annually until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement.
- (C) If a Company discovers an agreement or arrangement that should have been disclosed pursuant to subparagraph (A) but was not, the Company must promptly make the required disclosure by filing a Form 8-K or 6-K, where required by SEC rules, or by issuing a press release. Remedial disclosure under this subparagraph, regardless of its timing, does not satisfy the annual disclosure requirements under subparagraph (B).
- (D) A Company shall not be considered deficient with respect to this paragraph for purposes of LTSE Rule 14.501 if the Company has undertaken reasonable efforts to identify all such agreements or arrangements, including asking each director or nominee in a manner designed to allow timely disclosure, and makes the disclosure required by subparagraph (C) promptly upon discovery of the agreement or arrangement. In all other cases, the Company must submit a plan sufficient to satisfy Exchange staff that the Company has adopted processes and procedures designed to identify and disclose relevant agreements or arrangements.
- (E) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of LTSE Rule 14.207(b)(3) by utilizing the process described in LTSE Rule 14.407(a)(3).

(c) **Obligation to File Periodic Financial Reports**

- (1) A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to the Exchange two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to the Exchange

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at continuedlisting@LTSE.com. All required reports must be filed with the Exchange on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with the Exchange shall contain audited financial statements.

(2) Foreign Private Issuer Interim Reports

Each Foreign Private Issuer shall submit on a Form 6-K an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English, but does not have to be reconciled to U.S. GAAP, must be provided no later than six months following the end of the Company's second quarter. In the case of a Foreign Private Issuer that is a limited partnership, such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(3) Auditor Registration

Each listed Company shall be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7212].

(d) Distribution of Annual and Interim Reports

(1) Distribution of Annual Reports. Each Company (including a limited partnership) shall make available to Shareholders an annual report containing audited financial statements of the Company 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. A Company may comply with this requirement either:

(A) by mailing the report to Shareholders;

(B) by satisfying the requirements for furnishing an annual report contained in Rule 14a-16 under the Act; or

(C) by posting the annual report to Shareholders on or through the Company's website (or, in the case of a Company that is an investment company that does not maintain its own website, on a website that the Company is allowed to use to satisfy the website posting requirement in Rule 16a-3(k) under the Act), along with a prominent undertaking in the English language to provide Shareholders, upon request, a hard copy of the Company's annual report free

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of charge. A Company that chooses to satisfy this requirement pursuant to this paragraph (C) must, simultaneous with this posting, issue a press release stating that its annual report has been filed with the Commission (or Other Regulatory Authority). This press release shall also state that the annual report is available on the Company's website and include the website address and that Shareholders may receive a hard copy free of charge upon request. A Company must provide such hard copies within a reasonable period of time following the request.

- (2) Distribution of Interim Reports. Exchange Companies that distribute interim reports to Shareholders should distribute such reports to both registered and beneficial Shareholders. Exchange Companies are also encouraged to consider additional technological methods to communicate such information to Shareholders in a timely and less costly manner as such technology becomes available.
- (3) Access to Quarterly Reports.
  - (A) Each Company that is not a limited partnership (limited partnerships are governed by paragraph (B) below) and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to Shareholders either prior to or as soon as practicable following the Company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with the Exchange in addition to filing its Form 10-Q pursuant to Rule 14.207(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.
  - (B) Each Company that is a limited partnership and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the partnership's filing of its Form 10-Q with the Commission. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with the Exchange in addition to filing its Form 10-Q pursuant to LTSE Rule 14.207(c)(1).

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The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

- (4) Access to Interim Reports
  - (A) Each Company that is not a limited partnership and is not subject to Rule 13a-13 under the Act and that is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to Shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to Shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to Shareholders differs from that filed with the regulatory authority, the Company shall file one copy of the report to Shareholders with the Exchange in addition to the report to the regulatory authority that is filed with the Exchange pursuant to LTSE Rule 14.207(c)(1).
  - (B) Each Company that is a limited partnership that is not subject to Rule 13a-13 under the Act and is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to limited partners reports which reflect the information contained in those interim reports. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Such reports shall be distributed to limited partners either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to limited partners differs from that filed with the regulatory authority, the Company shall file one copy of the report to limited partners with the Exchange in addition to the report to the regulatory authority that is filed with the Exchange pursuant to LTSE Rule 14.207(c)(1).
- (5) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of LTSE Rule 14.207(d)(1), (2), (3), or (4) or by utilizing the process described in LTSE Rule 14.407(a)(3).
- (6) The Company shall comply with any obligation of any person regarding filing or disclosure of information material to the Company or the security, whether such obligation arises under the securities laws of the United States or the Company's country of domicile, or other applicable federal or state statutes or rules.

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- (e) Exchange Notification Requirements. Various corporate events resulting in material changes will trigger the requirement for Companies to submit certain forms and applicable fees to the Exchange as specified below. All applicable forms can be found on the Exchange's Web site.
- (1) Change in Number of Shares Outstanding. The Company shall file, on a form designated by the Exchange no later than 10 days after the occurrence, any aggregate increase or decrease of any class of securities listed on the Exchange that exceeds 5% of the amount of securities of the class outstanding.
  - (2) Listing of Additional Shares. A Company shall be required to notify the Exchange, except for a Company solely listing American Depositary Receipts, at least 15 calendar days prior to:
    - (A) establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval; however the Exchange recognizes that when a Company makes an equity grant to induce an individual to accept employment, as permitted by the exception contained in LTSE Rule 14.412(c)(4), it may not be practical to provide the advance notice otherwise required by this LTSE Rule. Therefore, when a Company relies on that exception to make such an inducement grant without shareholder approval, it is sufficient to notify the Exchange about the grant and the use of the exception no later than the earlier of: (x) five calendar days after entering into the agreement to issue the securities; or (y) the date of the public announcement of the award required by LTSE Rule 14.412(c)(4); or
    - (B) issuing securities that may potentially result in a change of control of the Company; or
    - (C) issuing any common stock or security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or Substantial Shareholder of the Company has a 5% or greater interest (or if such persons collectively have a 10% or greater interest) in the Company to be acquired or in the consideration to be paid; or
    - (D) issuing any common stock, or any security convertible into common stock in a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre- transaction basis.

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The notifications required by this paragraph must be made on the Notification Form: Listing of Additional Shares and the Exchange encourages Companies to file this form as soon as practicable, even if all of the relevant terms are not yet known. The Exchange reviews these forms to determine compliance with applicable LTSE Rules, including the shareholder approval requirements. Therefore, if a Company fails to file timely the form required by this paragraph, the Exchange may issue either a Public Reprimand Letter or a Delisting Determination (pursuant to LTSE Rule 14.500).

- (3) Record Keeping Change
  - (A) The Company shall file on a form designated by the Exchange notification of any change to its name, the par value or title of its security, its symbol, or a similar change, no later than 10 days after the change.
  - (B) The Company shall also notify the Exchange promptly in writing, absent any fees, of any change in the general character or nature of its business and any change in the address of its principal executive offices.
- (4) Substitution Listing. The Company shall notify the Exchange of a Substitution Listing Event (other than a re- incorporation or a change to a Company's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by the Exchange. For a re- incorporation or change to a Company's place of organization, a Company shall notify the Exchange as soon as practicable after such event has been implemented by filing the appropriate form as designated by the Exchange.
- (5) Transfer Agent, Registrar, ADR Bank Changes. The issuer of any class of securities listed on the Exchange, except for American Depositary Receipts, shall notify the Exchange promptly in writing of any change in the Company's transfer agent or registrar.
- (6) Dividend Action or Stock Distribution. In the case of any dividend action or action relating to a stock distribution of a listed stock the Company shall, no later than 10 calendar days prior to the record date of such action:
  - (A) Notify the Exchange by filing the appropriate form as designated by the Exchange; and
  - (B) Provide public notice using a Regulation FD compliant method.
  - (C) Notice to the Exchange should be given as soon as possible after declaration and, in any event, no later than simultaneously with the public notice.

## **Rule 14.207. Obligations for Companies Listed on the Exchange**

- (f) **Obligation to Pay Fees.** The Company is required to pay all applicable fees as described in the Rule 14.600 Series.

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**\* \* \* \* \* Supplementary Material \* \* \* \* \***

### **.01 Disclosure of Material Information**

(a) *General Disclosure Requirements*

*Rule 14.207(b)(1) requires that, except in unusual circumstances, Exchange Companies disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Exchange Companies must notify the Exchange at least ten minutes prior to the release to the public of material information that involves any of the events set forth below when the public release of the information is made during System Hours (as defined in LTSE Rule 1.160). If the public release of the material information is made outside of System Hours (as defined in LTSE Rule 1.160), Exchange Companies must notify the Exchange's Regulation Department of the material information at least ten minutes prior to the start of System Hours (as defined in LTSE Rule 1.160). Under unusual circumstances Companies may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its legitimate corporate objectives. However, the Exchange Companies remain obligated to disclose this information to the Exchange upon request pursuant to LTSE Rule 14.207(a).*

*Whenever unusual market activity takes place in an Exchange Company's securities, the Company normally should determine whether there is material information or news which should be disclosed. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, or if information from a source other than the Company becomes known to the investing public, a clear public announcement may be required as to the state of negotiations or development of Company plans. Such an announcement may be required, even though the Company may not have previously been advised of such information or the matter has not yet been presented to the Company's Board of Directors for consideration. In certain circumstances, it may also be appropriate to publicly deny false or inaccurate rumors, which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.*

(b) *Notification to the Exchange's Regulation Department*

*Companies must notify the Exchange's Regulation Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news when the public release of the information is made during System Hours (as defined in LTSE Rule 1.160). If the public release of the material information is made outside of System Hours (as defined in LTSE Rule 1.160), the Company must notify the Exchange's Regulation Department of the material information at least ten minutes prior to the start of System Hours (as defined in LTSE Rule 1.160). Except in emergency situations, this notification must be made through the Exchange's electronic disclosure submission system available on the Exchange's Web site. In emergency situations, Companies may instead provide notification by telephone or facsimile. Examples of an emergency situation include: lack of*



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*computer or internet access; technical problems on the Exchange and a material development such that no draft disclosure document exists, but immediate notification to the Exchange's Regulation Department is important based on the material event.*

*If a Company repeatedly fails to either notify the Exchange at least ten minutes prior to the distribution of material news during System Hours (as defined in LTSE Rule 1.160) or at least ten minutes prior to the start of System Hours (as defined in LTSE Rule 1.160) for material news distributed outside of System Hours (as defined in LTSE Rule 1.160), or repeatedly fails to use the electronic disclosure submission system when the Exchange finds no emergency situation existed, the Exchange may issue a Public Reprimand Letter (as defined in LTSE Rule 14.500(b)(5)) or, in extreme cases, a Staff Delisting Determination (as defined in LTSE Rule 14.500(b)(7)). In determining whether to issue a Public Reprimand Letter, the Exchange will consider whether the Company has demonstrated a pattern of failures, whether the Company has been contacted concerning previous violations, and whether the Company has taken steps to assure that future violations will not occur.*

### **(c) Trading Halts**

*A trading halt benefits current and potential Shareholders by halting all trading in any Exchange securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known only to them. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has been released.*

*The Exchange's Regulation Department monitors real time trading in all Exchange securities during the trading day for price and volume activity. In the event of certain price and volume movements, the Exchange's Regulation Department may contact a Company and its Market Makers in order to ascertain the cause of the unusual market activity. The Exchange's Regulation Department treats the information provided by the Company and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. An Exchange listing includes an obligation to disclose to the Exchange's Regulation Department information that the Company is not otherwise disclosing to the investing public or the financial community. On, occasion, changes in market activity prior to the Company's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the Company, such as when an Exchange Company is subject to an unsolicited take-over bid by another company. Depending on the nature of the event and the Company's views regarding the business advisability of disclosing the information, the Exchange's Regulation Department may work with the Company to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated effect of the information on the price of the Company's securities, the Exchange's Regulation Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately*

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disseminated or that the original or an additional basis under LTSE Rule 11.282 exists for continuing the trading halt.

The Exchange's Regulation Department is required to keep non-public information, confidential and to use such information only for regulatory purposes.

Companies are required to notify the Exchange's Regulation Department of the release of material information included in the following list of events at least ten minutes prior to the release of such information to the public when the public release of the information is made during System Hours (as defined in LTSE Rule 1.160):

- (1) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."
- (2) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.
- (3) New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).
- (4) Senior management changes of a material nature or a change in control.
- (5) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.
- (6) Events regarding the Company's securities — e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.
- (7) Significant legal or regulatory developments. Regulation FD
- (8) Any event requiring the filing of a Form 8-K.

If the public release of the material information is made outside of System Hours (as defined in LTSE Rule 1.160), Exchange Companies must notify the Exchange's Regulation Department of the material information at least 10 minutes prior to the start of System Hours (as defined in LTSE Rule 1.160). It should also be noted that every development that might be reported to the Exchange in these areas would not necessarily be deemed to warrant a trading halt. In addition to the list of events set forth above, the Exchange encourages Companies to avail themselves of the opportunity for advance notification to the Exchange's Regulation Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.

### **.02 Use of Regulation FD Compliant Methods in the Disclosure of Material Information**

Regardless of the method of disclosure that a Company chooses to use, Companies are required to notify the Exchange's Regulation Department of the release of material information that involves any of the events set forth above at least ten minutes prior to its release to the public when the public release of the information is made during System Hours (as defined in LTSE Rule 1.160). If the public release of the material information is made outside of System Hours (as defined in LTSE Rule 1.160), Exchange Companies must notify LTSE Regulation of the material information at least 10 minutes prior to the start of System Hours (as defined in LTSE Rule 1.160). When a Company chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8-K, the Company will be required to provide prior notice to the Exchange's Regulation Department of: 1) the press release announcing the logistics of the

## **Rule 14.207. Obligations for Companies Listed on the Exchange**

future disclosure event; and 2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

Depending on the materiality of the information and the anticipated effect of the information on the price of the Company's securities, the Exchange's Regulation Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The Exchange's Regulation Department will assess with Companies using methods of disclosure other than a press release or Form 8-K the timing within the disclosure event when the Company will cover the material information so that the halt can be commenced accordingly. Companies will be responsible for promptly alerting the Exchange's Regulation Department of any significant changes to the previously outlined disclosure timeline. Companies are reminded that the posting of information on the company's website may not by itself be considered a sufficient method of public disclosure under Regulation FD and SEC guidance and releases thereunder, and as a result, under LTSE Rules.

### **.03 Disclosure of Third Party Director and Nominee Compensation**

LTSE Rule 14.207(b)(3) requires listed companies to publicly disclose the material terms of all agreements and arrangements between any director or nominee and any person or entity (other than the Company) relating to compensation or other payment in connection with that person's candidacy or service as a director. The terms "compensation" and "other payment" as used in this rule are not limited to cash payments and are intended to be construed broadly.

Subject to exceptions provided in the rule, the disclosure must be made on or through the Company's website or in the proxy or information statement for the next shareholders' meeting at which directors are elected in order to provide shareholders with information and sufficient time to help them make meaningful voting decisions. A Company posting the requisite disclosure on or through its website must make it publicly available no later than the date on which the Company files a proxy or information statement in connection with such shareholders' meeting (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F). Disclosure made available on the Company's website or through it by hyperlinking to another website, must be continuously accessible. If the website hosting the disclosure subsequently becomes inaccessible or that hyperlink inoperable, the company must promptly restore it or make other disclosure in accordance with this rule.

LTSE Rule 14.207(b)(3) does not separately require the initial disclosure of newly entered into agreements or arrangements, provided that disclosure is made pursuant to this rule for the next shareholders' meeting at which directors are elected. In addition, for publicly disclosed agreements and arrangements that existed prior to the nominee's candidacy and thus not required to be disclosed in accordance with LTSE Rule 14.207(b)(3)(A)(ii) but where the director or nominee's remuneration is thereafter materially increased specifically in connection with such person's candidacy or service as a director of the Company, only the difference between the new and previous level of compensation or other payment obligation needs be disclosed.

All references in this rule to proxy or information statements are to the definitive versions thereof.

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(Amended by SR-LTSE-2019-03 eff. October 18, 2019; amended by SR-LTSE-2019-04 eff. December 5, 2019)

**Rule 14.208. Direct Registration Program**

(a) Except as indicated in paragraph (c) below, all securities listed on the Exchange (except securities which are book- entry only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act.

(b) If a Company establishes or maintains a Direct Registration Program for its Shareholders, the Company shall, directly or through its transfer agent, participate in an electronic link with a clearing agency registered under Section 17A of the Act to facilitate the electronic transfer of securities held pursuant to such program.

(c) Exemption

A foreign issuer, as defined under Rule 3b-4 under the Act, including a Foreign Private Issuer shall not be 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 its home country prohibits compliance.

**Rule 14.210. Dually-Listed Securities**

(a) A Company is permitted to have a class of securities that 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) A Company 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 Company'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, a Company that has Dually-Listed Securities must promptly notify the other national securities exchange on which the Company'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 of the LTSE Rules.

(c) For so long as a Company that seeks to list or has listed Dually-Listed Securities on the Exchange is listed on another national securities exchange that is its primary listing market and requires a minimum number of market makers, the minimum market maker requirements of LTSE Rules 14.310 and 14.320 that require a company listed on the Exchange to maintain a particular minimum number of registered and active Market Makers will not be applicable to such Dually-Listed Security.

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\* \* \* \* \* **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 are or will be listed on another national securities exchange to apply to also list those securities on the Exchange. 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 LTSE Rule 11.282(a) (Authority to Initiate Trading Halts). LTSE Rule 11.282 (a)(2) and (3) shall apply to such Dually-Listed Securities, whereas LTSE Rule 11.282(a)(1), (4), (5), (6), and (7) shall not. Listing fees pursuant to the LTSE Rule Series 14.600 (Listed Company Fees) shall continue to apply to Dually-Listed Securities. In addition, Dually-Listed Securities shall be LTSE 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.*

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*(Amended by SR-LTSE-2019-03 eff. October 18, 2019)*

**Rule Series 14.300. Listings Requirements**

**Rule 14.301. General Listing Requirements**

This section contains the initial and continued listing requirements and standards for listing a Company's Primary Equity Security on the Exchange. This section also contains the initial and continued listing requirements for Rights and Warrants, and Preferred and Secondary Classes of Common Stock on the Exchange.

In addition to meeting the quantitative requirements in this section, a Company must meet the requirements of LTSE Rule Series 14.200, including the disclosure obligations set forth in LTSE Rule 14.207, the Corporate Governance requirements set forth in the LTSE Rule Series 14.400, and pay any applicable fees in the LTSE Rule Series 14.600. A Company's failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in LTSE Rule Series 14.500.

**Rule 14.302. Definitions and Computations**

- (a) A Company is affiliated with another Company if that other Company, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of the Company. Control, for these purposes, means having the ability to exercise significant influence. Ability to exercise significant influence will be presumed to exist where the parent or affiliated Company directly or indirectly owns

**Rule 14.302. Definitions and Computations**

20% or more of the other Company's voting securities, and also can be indicated by representation on the board of directors, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, or technological dependency.

- (b) In computing Cash Flows, LTSE will rely on the net cash provided by operating activities, as reported in the Company's financial information as filed with the Commission in the Company's most recent periodic report and/or registration statement excluding changes in working capital or in operating assets and liabilities.
- (c) In computing income from continuing operations before income taxes, LTSE will rely on a Company's financial information as filed with the Commission in the Company's most recent periodic report and/or registration statement.
- (d) In computing the number of Publicly Held Shares, LTSE will not consider shares held by an officer, director or 10% or greater Shareholder of the Company.
- (e) In the case of a Company listing in connection with its initial public offering, compliance with the market capitalization requirements of LTSE Rules 14.310(b)(2), (3), and (4) will be based on the Company's market capitalization at the time of listing.
- (f) A period of less than three months shall not be considered a Fiscal Year, even if reported as a stub period in the Company's publicly reported financial statements.
- (g) If a Company has less than three years of publicly reported financial data, it may qualify under LTSE Rule 14.310(b)(1) if it has (1) reported aggregate income from continuing operations before income taxes of at least \$11 million, and (2) positive income from continuing operations before income taxes in each of the reported fiscal years.
- (h) If a Company has less than three years of publicly reported financial data, it may qualify under LTSE Rule 14.310(b)(2) if it has (1) reported aggregate cash flows of at least \$27.5 million, and (2) positive cash flows in each of the reported fiscal years.
- (i) In computing total assets and stockholders' equity for purposes of LTSE Rule 14.310(b)(4), LTSE will rely on a Company's most recent publicly reported financial statements subject to the adjustments described below:
  - (1) Application of Use of Proceeds - If a company is in registration with the SEC and is in the process of an equity offering, adjustments should be made to reflect the net proceeds of that offering, and the specified intended application(s) of such proceeds to:

**Rule 14.302. Definitions and Computations**

- (A) Pay off existing debt or other financial instruments: The adjustment will include elimination of the actual historical interest expense on debt or other financial instruments classified as liabilities under generally accepted accounting principles being retired with offering proceeds of all relevant periods or by conversion into common stock at the time of an initial public offering occurring in conjunction with the company's listing. If the event giving rise to the adjustment occurred during a time-period such that pro forma amounts are not set forth in the SEC registration statement (typically, the pro forma effect of repayment of debt will be provided in the current registration statement only with respect to the last fiscal year plus any interim period in accordance with SEC rules), the company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants.
- (B) Fund an acquisition:
- (i) The adjustments will include those applicable with respect to acquisition(s) to be funded with the proceeds. Adjustments will be made that are disclosed as such in accordance with Rule 3-05 "Financial Statements of Business Acquired or to be Acquired" and Article 11 of Regulation S-X. Adjustments will be made for all the relevant periods for those acquisitions for which historical financial information of the acquiree is required to be disclosed in the SEC registration statement; and
  - (ii) Adjustments applicable to any period for which pro forma numbers are not set forth in the registration statement shall be accompanied by the relevant adjusted financial data to combine the historical results of the acquiree (or relevant portion thereof) and acquiror, as disclosed in the company's SEC filing. Under SEC rules, the number of periods disclosed depends upon the significance level of the acquiree to the acquiror. The adjustments will include those necessary to reflect (a) the allocation of the purchase price, including adjusting assets and liabilities of the acquiree to fair value recognizing any intangibles (and associated amortization and depreciation), and (b) the effects of additional financing to complete the acquisition. The company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied

**Rule 14.310. Initial Listing Requirements for Primary Equity Securities**

agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants.

- (2) Acquisitions and Dispositions - In instances other than acquisitions (and related dispositions of part of the acquiree) funded with the use of proceeds, adjustments will be made for those acquisitions and dispositions that are disclosed as such in a company's financial statements in accordance with Rule 3-05 "Financial Statements of Business Acquired or to be Acquired" and Article 11 of Regulation S-X. If the disclosure does not specify pre-tax earnings from continuing operations, minority interest, and equity in the earnings or losses of investees, then such data must be prepared by the company's outside audit firm for the Exchange's consideration. In this regard, the audit firm would have to issue an independent accountant's report on applying agreed-upon procedures in accordance with the standards established by the American Institute of Certified Public Accountants.

**Rule 14.310. Initial Listing Requirements for Primary Equity Securities**

- (a) For initial listing on the Exchange, a Company's Primary Equity Security must meet the following requirements:
  - (1) Minimum bid price of at least \$4 per share;
  - (2) At least 1,250,000 Publicly Held Shares;
  - (3) Shareholders:
    - (A) At least 450 round lot shareholders; or
    - (B) At least 2,200 total shareholders; or
    - (C) At least 550 total shareholders and an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month.
  - (4) Market Value of Publicly Held Shares requirement:
    - (A) At least \$110 million; or
    - (B) At least \$100 million and stockholders' equity of at least \$110,000,000; or
    - (C) At least \$45 million in the case of: (i) a Company listing in connection with its initial public offering; and (ii) a Company that is affiliated with, or a spin-off from, another Company listed on the Exchange.



**Rule 14.310. Initial Listing Requirements for Primary Equity Securities**

- (b) For initial listing on the Exchange, a Company must meet the requirements of subparagraphs (1), (2), (3) or (4) below:
- (1) (i) Aggregate income from continuing operations before income taxes of at least \$11 million over the prior three fiscal years, (ii) positive income from continuing operations before income taxes in each of the prior three fiscal years, and (iii) at least \$2.2 million income from continuing operations before income taxes in each of the two most recent fiscal years; or
  - (2) (i) Aggregate cash flows of at least \$27.5 million over the prior three fiscal years, (ii) positive cash flows in each of the prior three fiscal years, and (iii) average market capitalization of at least \$550 million over the prior 12 months and total revenue of at least \$110 million in the previous fiscal year; or
  - (3) (i) Average market capitalization of at least \$850 million over the prior 12 months, and (ii) total revenue of at least \$90 million in the previous fiscal year; or
  - (4) (i) Market capitalization of at least \$160 million, (ii) total assets of at least \$80 million, and (iii) stockholders' equity of at least \$55 million.
- (c) For initial listing on the Exchange, a Company must have four registered and active Market Makers unless it meets one of the following requirements below in which case it must have three registered and active Market Makers:
- (1) (i) Annual income from continuing operations before income taxes of at least \$1 million in the most recently completed fiscal year or in two of the three most recently completed fiscal years; (ii) stockholders' equity of at least \$15 million; and (iii) Market Value Of Publicly Held Shares of at least \$8 million; or
  - (2) (i) Stockholders' equity of at least \$30 million; (ii) two-year operating history; and (iii) Market Value Of Publicly Held Shares of at least \$18 million.
- (d) However, if a Company is a closed end management investment company registered under the Investment Company Act of 1940, it must meet the requirements of LTSE Rules 14.310(a)(1) - (3) and 14.310(c) but not the requirements of LTSE Rule 14.310(b). In lieu of meeting the requirements of 14.310(b) a closed end management investment company must have a Market Value of Publicly Held Shares of at least \$70 million.
- (1) A closed end management investment company that is listed concurrently with other closed end management investment companies that have a common investment adviser or whose investment advisers are "affiliated persons" as

**Rule 14.315. Initial Listing Requirements for Preferred Stock and Secondary Classes of Common Stock**

defined in the Investment Company Act of 1940 (a "Fund Family") shall be eligible if:

- (A) The total Market Value Of Publicly Held Shares in such Fund Family is at least \$220 million;
  - (B) The average Market Value Of Publicly Held Shares for all funds in the Fund Family is at least \$50 million; and
  - (C) Each fund in the Fund Family has a Market Value of Publicly Held Shares of at least \$35 million.
- (e) A business development company as defined in Section 2 of the Investment Company Act of 1940 must meet the applicable requirements of LTSE Rules 14.310(a) and 14.310(c) but not the requirements of LTSE Rule 14.310(b). In lieu of meeting the requirements of LTSE Rule 14.310(b) a business development company must have a Market Value of Listed Securities of at least \$80 million.

**Rule 14.311. Initial Listing Requirements for Rights and Warrants**

For initial listing, the rights or warrants must meet all the requirements below:

- (a) At least 450,000 rights or warrants issued;
- (b) The underlying security must be listed on the Exchange or be a Covered Security
- (c) There must be at least three registered and active Market Makers; and
- (d) In the case of warrants, there must be at least 400 Round Lot Holders (except that this requirement will not apply to the listing of warrants in connection with the initial firm commitment underwritten public offering of such warrants).

**Rule 14.315. Initial Listing Requirements for Preferred Stock and Secondary Classes of Common Stock**

- (a) When the Primary Equity Security of the Company is listed on the Exchange or is a Covered Security, the preferred stock or secondary class of common stock must meet all of the requirements set forth in (1) through (5) below.
  - (1) At least 200,000 Publicly Held Shares;
  - (2) Market Value of Publicly Held Shares of at least \$4 million;
  - (3) Minimum bid price of at least \$4 per share;

**Rule 14.316. Listing Requirements for Securities Not Otherwise Specified (Other Securities)**

- (4) At least 100 Round Lot Holders; and
  - (5) At least three registered and active Market Makers.
- (b) When the Company's Primary Equity Security is not listed on the Exchange or a Covered Security, the preferred stock and/or secondary class of common stock may be listed on the Exchange so long as it satisfies the initial listing criteria for Primary Equity Securities set forth in LTSE Rule 14.310.

**Rule 14.316. Listing Requirements for Securities Not Otherwise Specified (Other Securities)**

(a) Initial Listing Requirements

- (1) LTSE will consider listing any security not otherwise covered by the criteria in the Rule 14.300 Series, provided the instrument is otherwise suited to trade through the facilities of LTSE. Such securities will be evaluated for listing against the following criteria:
    - (A) The Company shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of a Company which is unable to satisfy the income criteria set forth in LTSE Rule 14.310(b)(1), LTSE generally will require the Company to have the following:
      - (i) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or
      - (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million.
    - (B) For equity securities, there must be:
      - (i) a minimum of 400 holders of the security; and
      - (ii) a minimum public distribution of 1,000,000 trading units.
- However, if the instrument is redeemable at the option of the holders thereof on at least a weekly basis, these requirements shall not apply.
- (C) The aggregate market value/principal amount of the security shall be at least \$4 million.

- (2) Issuers of securities listed pursuant to this LTSE Rule 14.316 must be listed on LTSE, the NASDAQ Global Market, NASDAQ Global Select Market or the New

**Rule 14.320. Continued Listing Requirements and Standards for Primary Equity Securities**

York Stock Exchange (NYSE) or be an affiliate of a Company listed on LTSE, the NASDAQ Global Market, NASDAQ Global Select Market or the NYSE; provided, however, that the provisions of LTSE Rule 14.300 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

- (3) Prior to the commencement of trading of securities listed pursuant to this paragraph, LTSE will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding LTSE Member compliance responsibilities and requirements when handling transactions in such securities.

(b) Continued Listing Requirements

Except as otherwise provided in these rules, the aggregate market value or principal amount of publicly-held units must be at least \$1 million.

**Rule 14.320. Continued Listing Requirements and Standards for Primary Equity Securities**

A Company that has its Primary Equity Security listed on the Exchange must continue to meet all of the requirements set forth in paragraph (a) below and at least one of the Standards in paragraph (b) below. Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in LTSE Rule 14.500.

(a) Continued Listing Requirements for Primary Equity Securities:

- (1) Minimum bid price of \$1 per share ; and
- (2) At least 400 Total Holders.

(b) Continued Listing Standards for Primary Equity Securities:

- (1) Equity Standard
  - (A) Stockholders' equity of at least \$10 million;
  - (B) At least 750,000 Publicly Held Shares;
  - (C) Market Value of Publicly Held Shares of at least \$5 million; and
  - (D) At least two registered and active Market Makers
- (2) Market Value Standard

**Rule 14.340. Continued Listing Requirements for Preferred Stock and Secondary Classes of Common Stock**

- (A) Market Value of Listed Securities of at least \$50 million;
  - (B) At least 1,100,000 Publicly Held Shares;
  - (C) Market Value of Publicly Held Shares of at least \$15 million; and
  - (D) At least four registered and active Market Makers
- (3) Total Assets/Total Revenue Standard
- (A) Total assets and total revenue of at least \$50 million each for the most recently completed fiscal year or two of the three most recently completed fiscal years;
  - (B) At least 1,100,000 Publicly Held Shares;
  - (C) Market Value of Publicly Held Shares of at least \$15 million; and
  - (D) At least four registered and active Market Makers

**Rule 14.330. Continued Listing Requirements for Rights and Warrants**

For continued listing, the rights or warrants must meet all the requirements below:

- (a) The underlying security must continue to be listed on the Exchange or be a Covered Security; and
- (b) There must be at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

**Rule 14.340. Continued Listing Requirements for Preferred Stock and Secondary Classes of Common Stock**

- (a) When the Company's Primary Equity Security of the Company is listed on the Exchange or is a Covered Security, the preferred stock or secondary class of common stock must meet all of the requirements set forth in (1) through (5) below.
  - (1) At least 100,000 Publicly Held Shares;
  - (2) A Market Value of Publicly Held Shares of at least \$1,000,000;
  - (3) Minimum bid price of at least \$1 per share;
  - (4) At least 100 Public Holders; and

**Rule 14.350. Unlisted Trading Privileges**

- (5) At least two registered and active Market Makers
- (b) When the Primary Equity Security of the Company is not listed on the Exchange or a Covered Security, the preferred stock and/or secondary class of common stock may continue to be listed on the Exchange so long as it satisfies the continued listing criteria for Primary Equity Securities set forth in LTSE Rule 14.320.

**Rule 14.350. Unlisted Trading Privileges**

- (a) General Provisions and Unlisted Trading Privileges.

The Exchange may extend unlisted trading privileges (“UTP”) to any security that is an NMS Stock that is listed on another national securities exchange or with respect to which unlisted trading privileges may otherwise be extended in accordance with Section 12(f) of the Exchange Act and any such security shall be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted.

- (b) UTP Exchange Traded Product.

Exchange Traded Product: The term “Exchange Traded Product” means a security that meets the definition of “derivative securities product” in Rule 19b-4(e) under the Exchange Act.

UTP Exchange Traded Product: The term “UTP Exchange Traded Product” means one of the following Exchange Traded Products that trades on the Exchange pursuant to unlisted trading privileges: Equity Linked Notes, Investment Company Units, Index-Linked Exchangeable Notes, Equity Gold Shares, Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed-Income Index-Linked Securities, Futures-Linked Securities, Multifactor-Index-Linked Securities, Trust Certificates, Currency and Index Warrants, Portfolio Depository Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, and Managed Trust Securities.

Any UTP Security that is a UTP Exchange Traded Product will be subject to the additional following rules:

- (1) Information Circular.

The Exchange will distribute an information circular prior to the commencement of trading in each such UTP Exchange Traded Product that generally includes the same information as is contained in the information circular provided by the listing

**Rule 14.350. Unlisted Trading Privileges**

exchange, including (a) the special risks of trading the new Exchange Traded Product, (b) the Exchange Rules that will apply to the new Exchange Traded Product, and (c) information about the dissemination of value of the underlying assets or indices.

(2) Product Description.

(A) Prospectus Delivery Requirements.

Members are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the UTP Exchange Traded Product is the subject of an order by the Securities and Exchange Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933.

(B) Written Description of Terms and Conditions.

The Exchange will inform Members of the application of the provisions of this subparagraph to UTP Exchange Traded Products by means of an information circular. The Exchange requires that Members provide each purchaser of UTP Exchange Traded Products a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such securities is delivered to such purchaser. In addition, Members will include a written description with any sales material relating to UTP Exchange Traded Products that is provided to customers or the public. Any other written materials provided by Members to customers or the public making specific reference to the UTP Exchange Traded Products as an investment vehicle must include a statement substantially in the following form: "A circular describing the terms and characteristics of [the UTP Exchange Traded Products] has been prepared by the [open-ended management investment company name] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [the UTP Exchange Traded Products]." A Member carrying an omnibus account for a non-Member is required to inform such non-Member that execution of an order to purchase UTP Exchange Traded Products for such omnibus account will be deemed to constitute an agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to the Member under this Rule.

**Rule 14.350. Unlisted Trading Privileges**

(C) Customer Requests for a Prospectus.

Upon request of a customer, a Member will also provide a prospectus for the particular UTP Exchange Traded Product.

(3) Trading Halts.

The Exchange will halt trading in a UTP Exchange Traded Product as provided for in Rule 11.271. Nothing in this rule will limit the power of the Exchange under the Rules or procedures of the Exchange with respect to the Exchange's ability to suspend trading in any securities if such suspension is necessary for the protection of investors or in the public interest.

(4) Market Maker Restrictions.

The following restrictions will apply to each Member acting as a registered Market Maker on the Exchange in a UTP Exchange Traded Product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities (collectively, "Reference Assets").

(A) The Member acting as a registered Market Maker on the Exchange in a UTP Exchange Traded Product must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives (collectively with Reference Assets, "Related Instruments"), which the Member acting as a registered Market Maker on the Exchange may have or over which it may exercise investment discretion. No Member acting as a registered Market Maker on the Exchange in the UTP Exchange Traded Product will trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which a Member acting as a registered Market Maker on the Exchange, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule 14.350.

(B) A Market Maker on the Exchange will, in a manner prescribed by the Exchange, file with the Exchange and keep current a list identifying any accounts ("Related Instrument Trading Accounts") for which Related Instruments are traded:

(i) in which the Market Maker holds an interest;



## **Rule 14.401. Background**

- (ii) over which it has investment discretion; or
- (iii) in which it shares in the profits and/or losses.

A Market Maker on the Exchange may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account that has not been reported to the Exchange as required by this Rule 14.350.

- (C) In addition to the existing obligations under Exchange rules regarding the production of books and records, a Market Maker on the Exchange will, upon request by the Exchange, make available to the Exchange any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Market Maker on the Exchange for which Related Instruments are traded.
- (D) A Market Maker on the Exchange will not use any material nonpublic information in connection with trading a Related Instrument.

### (5) Surveillance.

The Exchange will enter into comprehensive surveillance sharing agreements with markets that trade components of the index or portfolio on which the UTP Exchange Traded Product is based to the same extent as the listing exchange's rules require the listing exchange to enter into comprehensive surveillance sharing agreements with such markets.

*(Added by SR-LTSE-2020-06 eff. March 11, 2020)*

## **Rule Series 14.400. Corporate Governance Requirements**

### **Rule 14.401. Background**

- (a) In addition to meeting applicable quantitative requirements in LTSE Rule Series 14.300, Companies applying to list and listed on the Exchange must meet the qualitative requirements outlined in this LTSE Rule Series 14.400. These requirements include rules relating to a Company's board of directors, including audit committees and Independent Director oversight of executive compensation and the director nomination process; code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; and shareholder

#### **Rule 14.405. Board of Directors and Committees**

approval, including voting rights. Exemptions to these rules are set forth in LTSE Rule 14.407 below.

- (b) The Exchange maintains a website that provides guidance on the applicability of the corporate governance requirements by FAQs and published summaries of anonymous versions of previously issued staff interpretative letters. Companies are encouraged to contact LTSE Regulation to discuss any complex issues or transactions. Companies can also submit a request for a written interpretation pursuant to paragraph (c) below.
- (c) Listed companies may request from LTSE a written interpretation of the Rules contained in Chapter 14. A response to such request will generally be provided within one-week following receipt by LTSE Regulation of all information necessary to respond to the request.

#### **Rule 14.405. Board of Directors and Committees**

##### (a) Definitions

- (1) "Executive Officer" means those officers covered in Rule 16a-1(f) under the Act.
- (2) "Independent Director" means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this LTSE Rule, "Family Member" means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home. The following persons shall not be considered independent:
  - (A) a director who is, or at any time during the past three years was, employed by the Company;
  - (B) a director who accepted or who has a Family Member who accepted any compensation from the Company in excess of \$120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:
    - (i) compensation for board or board committee service;
    - (ii) compensation paid to a Family Member who is an employee (other than an Executive Officer) of the Company; or

**Rule 14.405. Board of Directors and Committees**

- (iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.

Provided, however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under LTSE Rule 14.405(c)(2).

- (C) a director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the Company as an Executive Officer;
- (D) a director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:
  - (i) payments arising solely from investments in the Company's securities; or
  - (ii) payments under non-discretionary charitable contribution matching programs.
- (E) a director of the Company who is, or has a Family Member who is, employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company serve on the compensation committee of such other entity; or
- (F) a director who is, or has a Family Member who is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during any of the past three years.
- (G) in the case of an investment company, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.01 Definition of Independence**

*It is important for investors to have confidence that individuals serving as Independent Directors do not have a relationship with the listed Company that would impair their independence. The*

## **Rule 14.405. Board of Directors and Committees**

*board has a responsibility to make an affirmative determination that no such relationships exist through the application of LTSE Rule 14.405(a). LTSE Rule 14.405(a) also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and Companies, facilitate uniform application of the rules, and ease administration. Because LTSE does not believe that ownership of Company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be noted that there are additional, more stringent requirements that apply to directors serving on audit committees, as specified in LTSE Rule 14.405(c).*

*The Rule's reference to the "Company" includes any parent or subsidiary of the Company. The term "parent or subsidiary" is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements). The reference to Executive Officer means those officers covered in Rule 16a-1(f) under the Act. In the context of the definition of Family Member under LTSE Rule 14.405(a)(2), the reference to marriage is intended to capture relationships specified in the Rule (parents, children and siblings) that arise as a result of marriage, such as "in-law" relationships.*

*The three year look-back periods referenced in paragraphs (A), (C), (E) and (F) of the Rule commence on the date the relationship ceases. For example, a director employed by the Company is not independent until three years after such employment terminates.*

*For purposes of paragraph (A) of the Rule, employment by a director as an Executive Officer on an interim basis shall not disqualify that director from being considered independent following such employment, provided the interim employment did not last longer than one year. A director would not be considered independent while serving as an interim officer. Similarly, for purposes of paragraph (B) of the Rule, compensation received by a director for former service as an interim Executive Officer need not be considered as compensation in determining independence after such service, provided such interim employment did not last longer than one year. Nonetheless, the Company's board of directors still must consider whether such former employment and any compensation received would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director. In addition, if the director participated in the preparation of the Company's financial statements while serving as an interim Executive Officer LTSE Rule 14.405(c)(2)(A)(iii) would preclude service on the audit committee for three years.*

*Paragraph (B) of the Rule is generally intended to capture situations where a compensation is made directly to (or for the benefit of) the director or a Family Member of the director. For example, consulting or personal service contracts with a director or Family Member of the director would be analyzed under paragraph (B) of the Rule. In addition, political contributions to the campaign of a director or a Family Member of the director would be considered indirect compensation under paragraph (B). Non-preferential payments made in the ordinary course of providing business services (such as payments of interest or proceeds related to banking services or loans by a Company that is a financial institution or payment of claims on a policy by a Company that is an insurance company), payments arising solely from investments in the Company's securities and loans permitted under Section 13(k) of the Act will not preclude a finding of director independence as long as the payments are non-compensatory in nature. Depending on the circumstances, a loan or payment could be compensatory if, for example, it is not on terms generally available to the public.*

*Paragraph (D) of the Rule is generally intended to capture payments to an entity with which the director or Family Member of the director is affiliated by serving as a partner, controlling*

## **Rule 14.405. Board of Directors and Committees**

*Shareholder or Executive Officer of such entity. Under exceptional circumstances, such as where a director has direct, significant business holdings, it may be appropriate to apply the corporate measurements in paragraph (D), rather than the individual measurements of paragraph (B). Issuers should contact LTSE Regulation if they wish to apply the Rule in this manner. The reference to a partner in paragraph (D) is not intended to include limited partners. It should be noted that the independence requirements of paragraph (D) of the Rule are broader than Rule 10A-3(e)(8) under the Act.*

*Under paragraph (D), a director who is, or who has a Family Member who is, an Executive Officer of a charitable organization may not be considered independent if the Company makes payments to the charity in excess of the greater of 5% of the charity's revenues or \$200,000. However, LTSE encourages Companies to consider other situations where a director or their Family Member and the Company each have a relationship with the same charity when assessing director independence.*

*For purposes of determining whether a lawyer is eligible to serve on an audit committee, Rule 10A-3 under the Act generally provides that any partner in a law firm that receives payments from the issuer is ineligible to serve on that issuer's audit committee. In determining whether a director may be considered independent for purposes other than the audit committee, payments to a law firm would generally be considered under LTSE Rule 14.405(a)(2), which looks to whether the payment exceeds the greater of 5% of the recipient's gross revenues or \$200,000; however, if the firm is a sole proprietorship, LTSE Rule 14.405(a)(2)(B), which looks to whether the payment exceeds \$120,000, applies.*

*Paragraph (G) of the Rule provides a different measurement for independence for investment companies in order to harmonize with the Investment Company Act of 1940. In particular, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, shall not be considered independent.*

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### **(b) Independent Directors**

#### **(1) Majority Independent Board**

A majority of the board of directors must be comprised of Independent Directors as defined in LTSE Rule 14.405(a)(2). The Company, other than a Foreign Private Issuer, must comply with the disclosure requirements set forth in Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) those directors that the board of directors has determined to be independent under LTSE Rule 14.405(a)(2).

#### **(A) Cure Period for Majority Independent Board**

If a Company fails to comply with this requirement due to one vacancy, or one director ceases to be independent due to circumstances beyond their

**Rule 14.405. Board of Directors and Committees**

reasonable control, the Company shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision shall provide notice to LTSE immediately upon learning of the event or circumstance that caused the noncompliance.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.02 Majority Independent Board**

*Independent Directors (as defined in LTSE Rule 14.405(a)(2)) play an important role in assuring investor confidence. Through the exercise of independent judgment, they act on behalf of investors to maximize shareholder value in the Companies they oversee and guard against conflicts of interest. Requiring that the board be comprised of a majority of Independent Directors empowers such directors to carry out more effectively these responsibilities.*

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(2) Executive Sessions

Independent Directors must have regularly scheduled meetings at which only Independent Directors are present ("executive sessions").

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.03 Executive Sessions of Independent Directors**

*Regularly scheduled executive sessions encourage and enhance communication among Independent Directors. It is contemplated that executive sessions will occur at least twice a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.*

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(c) Audit Committee Requirements

(1) Audit Committee Charter

Each Company must 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. The charter must specify:

**Rule 14.405. Board of Directors and Committees**

- (A) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;
- (B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the Company, actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor;
- (C) the committee's purpose of overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company; and
- (D) the specific audit committee responsibilities and authority set forth in LTSE Rule 14.405(c)(3).

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.04 Audit Committee Charter**

*Each Company is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in Rule 10A-3(b)(2), (3), (4), and (5) under the Act. Rule 10A-3(b)(3)(ii) under the Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed Company of concerns regarding questionable accounting or auditing matters. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities.*

*LTSE Rule 14.405(c)(3) imposes additional requirements for investment company audit committees that must also be set forth in audit committee charters for these Companies.*

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(2) **Audit Committee Composition**

- (A) Each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must: (i) be an Independent Director as defined under LTSE Rule 14.405(a)(2); (ii) meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject

## **Rule 14.405. Board of Directors and Committees**

to the exemptions provided in Rule 10A-3(c) under the Act); (iii) not have participated in the preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past three years; and (iv) be able to read and understand fundamental financial statements, including a Company's balance sheet, income statement, and cash flow statement. Additionally, each Company must certify that it has, and will continue to have, at least one member of the audit committee who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

### **(B) Non-Independent Director for Exceptional and Limited Circumstances**

Notwithstanding paragraph (2)(A)(i), one director who: (i) is not an Independent Director as defined in LTSE Rule 14.405(a)(2); (ii) meets the criteria set forth in Section 10A(m)(3) under the Act and the rules thereunder; and (iii) is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the Company and its Shareholders. A Company, other than a Foreign Private Issuer, that relies on this exception must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S-K. A Foreign Private Issuer that relies on this exception must disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the individual not independent and the reasons for the board's determination. A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

### **.05 Audit Committee Composition**

*Audit committees are required to have a minimum of three members and be comprised only of Independent Directors. In addition to satisfying the Independent Director requirements under LTSE Rule 14.405(a)(2), audit committee members must meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act): they must not accept any consulting, advisory, or other compensatory fee from the Company other than for board service, and they must not be an affiliated person of the Company. As described in Rule 10A-3(d)(1) and (2), a Company must disclose reliance on certain exceptions from Rule 10A-3 and disclose an assessment of whether, and if so, how, such*



## **Rule 14.405. Board of Directors and Committees**

*reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of Rule 10A-3. It is recommended also that a Company disclose in its annual proxy (or, if the Company does not file a proxy, in its Form 10-K or 20-F) if any director is deemed eligible to serve on the audit committee but falls outside the safe harbor provisions of Rule 10A-3(e)(1)(ii) under the Act. A director who qualifies as an audit committee financial expert under Item 407(d)(5)(ii) and (iii) of Regulation S-K is presumed to qualify as a financially sophisticated audit committee member under LTSE Rule 14.405(c)(2)(A).*

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### **(3) Audit Committee Responsibilities and Authority**

The audit committee must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4), and (5) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act), concerning responsibilities relating to: (i) registered public accounting firms, (ii) complaints relating to accounting, internal accounting controls or auditing matters, (iii) authority to engage advisers, and (iv) funding as determined by the audit committee. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

### **.06 The Audit Committee Responsibilities and Authority**

*Audit committees must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4), and (5) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act), concerning responsibilities relating to registered public accounting firms; complaints relating to accounting; internal accounting controls or auditing matters; authority to engage advisers; and funding. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.*

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### **(4) Cure Periods for Audit Committee**

**Rule 14.405. Board of Directors and Committees**

- (A) If a Company fails to comply with the audit committee composition requirement under Rule 10A-3(b)(1) under the Act and LTSE Rule 14.405(c)(2)(A) because an audit committee member ceases to be independent for reasons outside the member's reasonable control, the audit committee member may remain on the audit committee until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. A Company relying on this provision must provide notice to LTSE immediately upon learning of the event or circumstance that caused the noncompliance.
- (B) If a Company fails to comply with the audit committee composition requirement under LTSE Rule 14.405(c)(2)(A) due to one vacancy on the audit committee, and the cure period in paragraph (A) is not otherwise being relied upon for another member, the Company will have until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the vacancy, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision must provide notice to LTSE immediately upon learning of the event or circumstance that caused the noncompliance.

(5) Exception

At any time when a Company has a class of common equity securities (or similar securities) that is listed on another national securities exchange or national securities association subject to the requirements of Rule 10A-3 under the Act, the listing of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the Company (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) shall not be subject to the requirements of LTSE Rule 14.405(c).

(d) Compensation Committee Requirements

(1) Compensation Committee Charter

Each Company must 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. The charter must specify:

**Rule 14.405. Board of Directors and Committees**

- (A) the scope of the compensation committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;
  - (B) the compensation committee's responsibility for determining, or recommending to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company;
  - (C) that the chief executive officer may not be present during voting or deliberations on his or her compensation; and
  - (D) the specific compensation committee responsibilities and authority set forth in LTSE Rule 14.405(d)(3).
- (2) Compensation Committee Composition

- (A) Each Company must have, and certify that it has and will continue to have, a compensation committee of at least two members. Each committee member must be an Independent Director as defined under LTSE Rule 14.405(a)(2). In addition, in affirmatively determining the independence of any director who will serve on the compensation committee of a board of directors, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the Company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to:
  - (i) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and
  - (ii) whether such director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company.
- (B) Non-Independent Committee Member under Exceptional and Limited Circumstances

Notwithstanding LTSE Rule 14.405(d)(2)(A) above, if the compensation committee is comprised of at least three members, one director who does not meet the requirements of LTSE Rule 14.405(d)(2)(A) and is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the compensation 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

**Rule 14.405. Board of Directors and Committees**

Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for the next annual meeting subsequent to such determination (or, if the Company 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 Company 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) Compensation Committee Responsibilities and Authority

As required by Rule 10C-1(b)(2), (3) and (4)(i)-(vi) under the Act, the compensation committee must have the following specific responsibilities and authority.

- (A) The compensation committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, legal counsel or other adviser.
- (B) The compensation committee shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, legal counsel and other adviser retained by the compensation committee.
- (C) The Company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, legal counsel or any other adviser retained by the compensation committee.
- (D) The compensation committee may select, or receive advice from, a compensation consultant, legal counsel or other adviser to the compensation committee, other than in-house legal counsel, only after taking into consideration the following factors:
  - (i) the provision of other services to the Company by the person that employs the compensation consultant, legal counsel or other adviser;
  - (ii) the amount of fees received from the Company by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;
  - (iii) the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;

**Rule 14.405. Board of Directors and Committees**

- (iv) any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee;
- (v) any stock of the Company owned by the compensation consultant, legal counsel or other adviser; and
- (vi) any business or personal relationship of the compensation consultant, legal counsel, other adviser or the person employing the adviser with an Executive Officer of the Company.

Nothing in this LTSE Rule shall be construed: (i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, legal counsel or other adviser to the compensation committee; or (ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

The compensation committee is required to conduct the independence assessment outlined in this LTSE Rule with respect to any compensation consultant, legal counsel or other adviser that provides advice to the compensation committee, other than in-house legal counsel. However, nothing in this LTSE Rule requires a compensation consultant, legal counsel or other compensation adviser to be independent, only that the compensation committee consider the enumerated independence factors before selecting, or receiving advice from, a compensation adviser. Compensation committees may select, or receive advice from, any compensation adviser they prefer, including ones that are not independent, after considering the six independence factors outlined above.

For purposes of this LTSE Rule, the compensation committee is not required to conduct an independence assessment for a compensation adviser that acts in a role limited to the following activities for which no disclosure is required under Item 407(e)(3)(iii) of Regulation S-K: (a) consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of Executive Officers or directors of the Company, and that is available generally to all salaried employees; and/or (b) providing information that either is not customized for a particular issuer or that is customized based on parameters that are not developed by the adviser, and about which the adviser does not provide advice.

- (4) Cure Period for Compensation Committee

## **Rule 14.405. Board of Directors and Committees**

If a Company fails to comply with the compensation committee composition requirement under LTSE Rule 14.405(d)(2)(A) due to one vacancy, or one compensation committee member ceases to be independent due to circumstances beyond the member's reasonable control, the Company shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision shall provide notice to LTSE immediately upon learning of the event or circumstance that caused the noncompliance.

### **(5) Smaller Reporting Companies**

A Smaller Reporting Company, as defined in Rule 12b-2 under the Act, is not subject to the requirements of LTSE Rule 14.405(d), except that a Smaller Reporting Company must have, and certify that it has and will continue to have, a compensation committee of at least two members, each of whom must be an Independent Director as defined under LTSE Rule 14.405(a)(2). A Smaller Reporting Company may rely on the exception in LTSE Rule 14.405(d)(2)(B) and the cure period in LTSE Rule 14.405(d)(4). In addition, 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 Rule 14.405(d)(1)(A) through (C). A Smaller Reporting Company does not need to include in its formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in LTSE Rule 14.405(d)(3).

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

### **.07 Independent Director Oversight of Executive Compensation**

*Independent oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to act in the best interests of the corporation. Compensation committees are required to have a minimum of two members and be comprised only of Independent Directors as defined under LTSE Rule 14.405(a)(2).*

*In addition, LTSE Rule 14.405(d)(2)(A) includes an additional independence test for compensation committee members. When considering the sources of a director's compensation for this purpose, the board should consider whether the director receives compensation from any person or entity that would impair the director's ability to make independent judgments about the Company's executive compensation. Similarly, when considering any affiliate relationship a director has with the Company, a subsidiary of the Company, or an affiliate*

## **Rule 14.405. Board of Directors and Committees**

*of a subsidiary of the Company, in determining independence for purposes of compensation committee service, the board should consider whether the affiliate relationship places the director under the direct or indirect control of the Company or its senior management, or creates a direct relationship between the director and members of senior management, in each case of a nature that would impair the director's ability to make independent judgments about the Company's executive compensation. In that regard, while a board may conclude differently with respect to individual facts and circumstances, LTSE does not believe that ownership of Company stock by itself, or possession of a controlling interest through ownership of Company stock by itself, precludes a board finding that it is appropriate for a director to serve on the compensation committee. In fact, it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.*

*For purposes of the additional independence test for compensation committee members described in LTSE Rule 14.405(d)(2)(A), any reference to the "Company" includes any parent or subsidiary of the Company. The term "parent or subsidiary" is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements).*

*A Smaller Reporting Company must have a compensation committee with a minimum of two members. Each compensation committee member must be an Independent Director as defined under LTSE Rule 14.405(a)(2). In addition, each Smaller Reporting Company must have a formal written compensation committee charter or board resolution that specifies the committee's responsibilities and authority set forth in LTSE Rule 14.405(d)(1)(A)-(C). However, in recognition of the fact that Smaller Reporting Companies may have fewer resources than larger Companies, Smaller Reporting Companies are not required to adhere to the additional compensation committee eligibility requirements in LTSE Rule 14.405(d)(2)(A), or to incorporate into their formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in LTSE Rule 14.405(d)(3).*

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### **(e) Independent Director Oversight of Director Nominations**

- (1) Director nominees must either be selected, or recommended for the Board's selection, either by:**
  - (A) Independent Directors constituting a majority of the Board's Independent Directors in a vote in which only Independent Directors participate, or**
  - (B) a nominations committee comprised solely of Independent Directors.**
- (2) Each Company must certify that it has adopted a formal written charter or board resolution, as applicable, addressing the nominations process and such related matters as may be required under the federal securities laws.**

## **Rule 14.405. Board of Directors and Committees**

(3) Non-Independent Committee Member under Exceptional and Limited Circumstances

Notwithstanding LTSE Rule 14.405(e)(1)(B) above, if the nominations committee is comprised of at least three members, one director, who is not an Independent Director as defined in LTSE 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 nominations 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 Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for next annual meeting subsequent to such determination (or, if the Company 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 Company 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.

(4) 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 a Company's obligation to comply with the committee composition requirements under LTSE Rules 14.405(c), (d), and (e).

(5) This LTSE Rule 14.405(e) is not applicable to a Company if the Company is subject to a binding obligation that requires a director nomination structure inconsistent with this LTSE Rule and such obligation pre-dates the approval date of this LTSE Rule.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

### **.08 Independent Director Oversight of Director Nominations**

*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 Rule is also intended to provide flexibility for a Company to choose an appropriate board structure and reduce resource burdens, while ensuring that Independent Directors approve all nominations.*

*This LTSE 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 Company 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 Company, Independent Director approval*



## **Rule 14.406. Code of Conduct**

*would not be required. This LTSE Rule is not applicable if the Company is subject to a binding obligation that requires a director nomination structure inconsistent with the rule and such obligation pre-dates the approval date of this LTSE Rule.*

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### **Rule 14.406. Code of Conduct**

Each Company shall adopt a code of conduct applicable to all directors, officers and employees, which shall be publicly available. A code of conduct satisfying this LTSE Rule must comply with the definition of a "code of ethics" set out in Section 406(c) of the Sarbanes-Oxley Act of 2002 ("the Sarbanes-Oxley Act") and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. In addition, the code must provide for an enforcement mechanism. Any waivers of the code for directors or Executive Officers must be approved by the Board. Companies, other than Foreign Private Issuers, shall disclose such waivers within four business days by filing a current report on Form 8-K with the Commission or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers shall disclose such waivers either by distributing a press release or including disclosure in a Form 6-K or in the next Form 20-F or 40-F. Alternatively, a Company, including a Foreign Private Issuer, may disclose waivers on the Company's website in a manner that satisfies the requirements of Item 5.05(c) of Form 8-K.

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**\* \* \* \* \* Supplementary Material \* \* \* \* \***

#### **.01 Code of Conduct**

*Ethical behavior is required and expected of every corporate director, officer and employee whether or not a formal code of conduct exists. The requirement of a publicly available code of conduct applicable to all directors, officers and employees of a Company is intended to demonstrate to investors that the board and management of LTSE Companies have carefully considered the requirement of ethical dealing and have put in place a system to ensure that they become aware of and take prompt action against any questionable behavior. For Company personnel, a code of conduct with enforcement provisions provides assurance that reporting of questionable behavior is protected and encouraged, and fosters an atmosphere of self-awareness and prudent conduct.*

*LTSE Rule 14.406 requires Companies to adopt a code of conduct complying with the definition of a "code of ethics" under Section 406(c) of the Sarbanes-Oxley Act of 2002 ("the Sarbanes-Oxley Act") and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. Thus, the code must include such standards as are reasonably necessary to promote the ethical handling of conflicts of interest, full and fair disclosure, and compliance with laws, rules and regulations, as specified by the Sarbanes-Oxley Act. However, the code of conduct required by Rule 14.406 must apply to all directors, officers, and employees. Companies can satisfy this obligation by adopting one or more codes of conduct, such that all*

## **Rule 14.406. Code of Conduct**

*directors, officers and employees are subject to a code that satisfies the definition of a "code of ethics."*

*As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interest of a director, officer or employee is in conflict with the interests of the Company, as when the individual receives improper personal benefits as a result of his or her position with the Company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the Company. Also, the disclosures a Company makes to the Commission are the essential source of information about the Company for regulators and investors — there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for Executive Officers or directors may be made only by the board and must be disclosed to Shareholders, along with the reasons for the waiver. All Companies, other than Foreign Private Issuers, must disclose such waivers within four business days by filing a current report on Form 8-K with the Commission, providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers must disclose such waivers either by providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, by including disclosure in a Form 6-K or in the next Form 20-F or 40-F or by distributing a press release. This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the Company and its Shareholders to the greatest extent possible.*

*Each code of conduct must also contain an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations.*

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## **Rule 14.407. Exemptions from Certain Corporate Governance Requirements**

This LTSE Rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and Companies ceasing to be Smaller Reporting Companies. This LTSE Rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.

### **(a) Exemptions to the Corporate Governance Requirements**

#### **(1) Asset-backed Issuers and Other Passive Issuers**

The following are exempt from the requirements related to Majority Independent Board (LTSE Rule 14.405(b)), Audit Committee (LTSE Rule 14.405(c)), Compensation Committee (LTSE Rule 14.405(d)), Director Nominations (LTSE

**Rule 14.407. Exemptions from Certain Corporate Governance Requirements**

Rule 14.405(e)), the Controlled Company Exemption (LTSE Rule 14.407(c)(2)) and Code of Conduct (LTSE Rule 14.406):

- (A) asset-backed issuers; and
- (B) issuers, such as unit investment trusts, including Portfolio Depository Receipts, which are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.01 Asset-backed Issuers Supplemental**

*Because of their unique attributes, LTSE Rules 14.405 (b), (c), (d), (e), and 14.406 do not apply to asset-backed issuers and issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.*

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(2) Cooperatives

Cooperative entities, such as agricultural cooperatives, that are structured to comply with relevant state law and federal tax law and that do not have a publicly traded class of common stock are exempt from LTSE Rules 14.405 (b), (d), (e), and 14.407(c)(2). However, such entities must comply with all federal securities laws, including without limitation those rules required by Section 10A(m) of the Act and Rule 10A-3 thereunder.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.02 Cooperatives Supplemental**

*Certain member-owned cooperatives that list their preferred stock are required to have their common stock owned by their members. Because of their unique structure and the fact that they do not have a publicly traded class of common stock, such entities are exempt from LTSE Rule 14.405(b), (d), and (e).*

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**Rule 14.407. Exemptions from Certain Corporate Governance Requirements**

(3) Foreign Private Issuers

(A) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of the LTSE Rule 14.400 Series, the requirement to disclose third-party director and nominee compensation set forth in LTSE Rule 14.207(b)(3), and the requirement to distribute annual and interim reports set forth in LTSE Rule 14.207(d), provided, however, that such a Company shall: comply with the Notification of Noncompliance requirement (LTSE Rule 14.410), the Voting Rights requirement (LTSE Rule 14.413), have an audit committee that satisfies LTSE Rule 14.405(c)(3), and ensure that such audit committee's members meet the independence requirement in LTSE Rule 14.405(c)(2)(A)(ii). Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of Chapter 14.

(B) Disclosure Requirements

(i) A Foreign Private Issuer that follows a home country practice in lieu of one or more of the LTSE Listing Rules shall disclose in its annual reports filed with the Commission each requirement that it does not follow and describe the home country practice followed by the Company in lieu of such requirements. Alternatively, a Foreign Private Issuer that is not required to file its annual report with the Commission on Form 20-F may make this disclosure only on its website. A Foreign Private Issuer that follows a home country practice in lieu of the requirement in LTSE Rule 14.405(d)(2) to have an independent compensation committee must disclose in its annual reports filed with the Commission the reasons why it does not have such an independent committee.

(ii) A Foreign Private Issuer making its initial public offering or first U.S. listing on LTSE shall disclose in its registration statement or on its website each requirement that it does not follow and describe the home country practice followed by the Company in lieu of such requirements.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.03 Foreign Private Issuer Supplemental**

*A Foreign Private Issuer (as defined in LTSE Rule 14.002) listed on LTSE may follow the practice in such Company's home country (as defined in General Instruction F of Form 20-F) in lieu of the provisions of the LTSE Rule Series 14.400 and LTSE Rule 14.207(d), subject to several important exceptions. First, such an issuer shall comply with LTSE Rule 14.410*

## **Rule 14.407. Exemptions from Certain Corporate Governance Requirements**

*(Notification of Noncompliance). Second, such a Company shall have an audit committee that satisfies LTSE Rule 14.405(c)(3). Third, members of such audit committee shall meet the criteria for independence referenced in LTSE Rule 14.405(c)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act). Finally, a Foreign Private Issuer that elects to follow home country practice in lieu of a requirement of LTSE Rules 14.400 or 14.207(d) shall submit to LTSE a written statement from an independent counsel in such Company's home country certifying that the Company's practices are not prohibited by the home country's laws. In the case of new listings, this certification is required at the time of listing. For existing Companies, the certification is required at the time the Company seeks to adopt its first noncompliant practice. In the interest of transparency, the rule requires a Foreign Private Issuer to make appropriate disclosures in the Company's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the Company's original listing in the United States, if that listing is on LTSE, in its registration statement (typically Form F-1, 20-F, or 40-F); alternatively, a Company that is not required to file an annual report on Form 20-F may provide these disclosures in English on its website in addition to, or instead of, providing these disclosures on its registration statement or annual report. The Company shall disclose each requirement that it does not follow and include a brief statement of the home country practice the Company follows in lieu of these corporate governance requirement(s). If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained. Companies that must file annual reports on Form 20-F are encouraged to provide these disclosures on their websites, in addition to the required Form 20-F disclosures, to provide maximum transparency about their practices.*

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### **(4) Limited Partnerships**

A limited partnership is not subject to the requirements of the LTSE Rule Series 14.400, except as provided in this LTSE Rule 14.407(a)(4). A limited partnership may request a written interpretation pursuant to LTSE Rule 14.401(c).

(A) No provision of this LTSE Rule shall be construed to require any foreign Company that is a partnership to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such Company or that is contrary to generally accepted business practices in the Company's country of domicile. LTSE shall have the ability to provide exemptions from applicability of these provisions as may be necessary or appropriate to carry out this intent.

### **(B) Corporate General Partner**

Each Company that is a limited partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership.

**Rule 14.407. Exemptions from Certain Corporate Governance Requirements**

(C) Independent Directors/Audit Committee

The corporate general partner or co-general partner shall maintain a sufficient number of Independent Directors on its board to satisfy the audit committee requirements set forth in LTSE Rule 14.405(c).

(D) Partner Meetings

A Company that is a limited partnership shall not be required to hold an annual meeting of limited partners unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(E) Quorum

In the event that a meeting of limited partners is required pursuant to paragraph (D), the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding.

(F) Solicitation of Proxies

In the event that a meeting of limited partners is required pursuant to paragraph (D), the Company shall provide all limited partners with proxy or information statements and if a vote is required, shall solicit proxies thereon.

(G) Review of Related Party Transactions

Each Company that is a limited partnership shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the Audit Committee or a comparable body of the Board of Directors for the review of potential material conflict of interest situations where appropriate.

(H) Shareholder Approval

Each Company that is a limited partnership must obtain shareholder approval when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, as would be required under LTSE Rule 14.412(c) and Supplementary Material .01 to LTSE Rule 14.412(c)

(I) Auditor Registration

**Rule 14.407. Exemptions from Certain Corporate Governance Requirements**

Each Company that is a limited partnership must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7212].

(J) Notification of Noncompliance.

Each Company that is a limited partnership must provide LTSE with prompt notification after an Executive Officer of the Company, or a person performing an equivalent role, becomes aware of any noncompliance by the Company with the requirements of this LTSE Rule Series 14.400.

(5) Management Investment Companies

Management investment companies (including business development companies) are subject to all the requirements of the Rule 14.400 Series, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the Independent Directors requirement, the Compensation Committee requirement, the Independent Director Oversight of Director Nominations requirement, and the Code of Conduct requirement, set forth in LTSE Rules 14.405(b), (d), and (e) and 14.406, respectively.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.04 Management Investment Companies Supplemental**

*Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by the LTSE Rule Series 14.400. In light of this, the Exchange exempts from LTSE Rules 14.405(b), (d), and (e) and 14.406 management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed- end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of the Rule 14.400 Series. Management investment companies that are Index Fund Shares and Managed Fund Shares are exempt from the Audit Committee requirements set forth in LTSE Rule 14.405(c), except for the applicable requirements of SEC Rule 10A-3.*

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(b) Phase-In Schedules

(1) Initial Public Offerings

**Rule 14.407. Exemptions from Certain Corporate Governance Requirements**

A Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent committee requirements set forth in LTSE Rules 14.405(d)(2) and (e)(1)(B) on the same schedule as it is permitted to phase in its compliance with the independent audit committee requirement pursuant to Rule 10A-3(b)(1)(iv)(A) under the Act. Accordingly, a Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the committee composition requirements set forth in LTSE Rule 14.405(d)(2) and (e)(1)(B) as follows: (1) one member must satisfy the requirement at the time of listing; (2) a majority of members must satisfy the requirement within 90 days of listing; and (3) all members must satisfy the requirement within one year of listing. Furthermore, a Company listing in connection with its initial public offering shall have twelve months from the date of listing to comply with the majority independent board requirement in LTSE Rule 14.405(b). It should be noted, however, that pursuant to Rule 10A-3(b)(1)(iii) under the Act investment companies are not afforded the exemptions under Rule 10A-3(b)(1)(iv) under the Act. Companies may choose not to adopt a nomination committee and may instead rely upon a majority of the Independent Directors to discharge responsibilities under LTSE Rule 14.405(b). For purposes of the LTSE Rule Series 14.400 other than LTSE Rules 14.405(c)(2)(A)(ii) and 14.410, a Company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act. For purposes of LTSE Rule 14.405(c)(2)(A)(ii) and LTSE Rule 14.410, a Company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the Company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

(2) Companies Emerging from Bankruptcy

Companies that are emerging from bankruptcy shall be permitted to phase-in independent nomination and compensation committees and majority independent boards on the same schedule as Companies listing in conjunction with their initial public offering.

(3) Transfers from other Markets

Companies transferring from other markets with a substantially similar requirement shall be afforded the balance of any grace period afforded by the other market. Companies transferring from other listed markets that do not have a substantially similar requirement shall be afforded one year from the date of listing on LTSE.



**Rule 14.407. Exemptions from Certain Corporate Governance Requirements**

This transition period is not intended to supplant any applicable requirements of Rule 10A-3 under the Act.

(4) Phase-In Schedule for a Company Ceasing to be a Smaller Reporting Company

Pursuant to Rule 12b-2 under the Act, a Company tests its status as a Smaller Reporting Company on an annual basis as of the last business day of its most recently completed second fiscal quarter (for purposes of this LTSE Rule, the "Determination Date"). A Company with a public float of \$75 million or more as of the Determination Date will cease to be a Smaller Reporting Company as of the beginning of the fiscal year following the Determination Date (the "Start Date").

By six months from the Start Date, a Company must comply with Rule 14.405(d)(3) and certify to LTSE that: (i) it has complied with the requirement in LTSE Rule 14.405(d)(1) to adopt a formal written compensation committee charter including the content specified in LTSE Rule 14.405(d)(1)(A) through (D); and (ii) it has complied, or within the applicable phase-in schedule will comply, with the additional requirements in LTSE Rule 14.405(d)(2)(A) regarding compensation committee composition.

A Company shall be permitted to phase in its compliance with the additional compensation committee eligibility requirements of LTSE Rule 14.405(d)(2)(A) relating to compensatory fees and affiliation as follows: (i) one member must satisfy the requirements by six months from the Start Date; (ii) a majority of members must satisfy the requirements by nine months from the Start Date; and (iii) all members must satisfy the requirements by one year from the Start Date.

Since a Smaller Reporting Company is required to have a compensation committee comprised of at least two Independent Directors, a Company that has ceased to be a Smaller Reporting Company may not use the phase-in schedule for the requirements of LTSE Rule 14.405(d)(2)(A) relating to minimum committee size or that the committee consist only of Independent Directors as defined under LTSE Rule 14.405(a)(2).

During this phase-in schedule, a Company that has ceased to be a Smaller Reporting Company must continue to comply with Rule 14.405(d)(5).

(c) How the Rules Apply to a Controlled Company

(1) Definition

**Rule 14.407. Exemptions from Certain Corporate Governance Requirements**

A Controlled Company is a 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.

(2) Exemptions Afforded to a Controlled Company

A Controlled Company is exempt from the requirements of LTSE Rules 14.405(b), (d), and (e), except for the requirements of subsection (b)(2) which pertain to executive sessions of Independent Directors. A Controlled Company, other than a Foreign Private Issuer, relying upon this exemption must comply with the disclosure requirements set forth in Instruction 1 to Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) that it is a Controlled Company and the basis for that determination.

(3) Phase-In Schedule for a Company Ceasing to be a Controlled Company

A Company that has ceased to be a Controlled Company within the meaning of LTSE Rule 14.407(c)(1) shall be permitted to phase-in its independent nomination and compensation committees and majority independent board on the same schedule as Companies listing in conjunction with their initial public offering. It should be noted, however, that a Company that has ceased to be a Controlled Company within the meaning of LTSE Rule 14.407(c)(1) must comply with the audit committee requirements of LTSE Rule 14.405(c) as of the date it ceased to be a Controlled Company. Furthermore, the executive sessions requirement of LTSE Rule 14.405(b)(2) applies to Controlled Companies as of the date of listing and continues to apply after it ceases to be controlled.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.05 Controlled Company Exemption**

*This exemption recognizes that majority Shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this LTSE Rule, the Shareholders must have publicly filed a notice that they are acting as a group (e.g., a Schedule 13D). A Controlled Company not relying upon this exemption need not provide any special disclosures about its controlled status. It should be emphasized that this controlled company exemption does not extend to the audit committee requirements under LTSE Rule 14.405(c) or the requirement for executive sessions of Independent Directors under LTSE Rule 14.405(b)(2).*

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**Rule 14.408. Meetings of Shareholders**

- (a) Each Company listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of Shareholders no later than one year after the end of the Company's fiscal year-end, unless such Company is a limited partnership that meets the requirements of LTSE Rule 14.407(a)(4)(D).

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.01 Meetings of Shareholders or Partners**

*LTSE Rule 14.408 requires that each Company listing common stock or voting preferred stock, and their equivalents, hold an annual meeting of Shareholders within one year of the end of each fiscal year. At each such meeting, Shareholders must be afforded the opportunity to discuss Company affairs with management and, if required by the Company's governing documents, to elect directors. A new listing that was not previously subject to a requirement to hold an annual meeting is required to hold its first meeting within one-year after its first fiscal year-end following listing. Of course, LTSE's meeting requirement does not supplant any applicable state or federal securities laws concerning annual meetings.*

*This requirement is not applicable as a result of a Company listing securities listed pursuant to LTSE Rule 14.316 (such as Trust Preferred Securities and Contingent Value Rights), unless the listed security is a common stock or voting preferred stock equivalent (e.g., a callable common stock). Notwithstanding, if the Company also lists common stock or voting preferred stock, or their equivalent, the Company must still hold an annual meeting for the holders of that common stock or voting preferred stock, or their equivalent.*

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- (b) Proxy Solicitation

Each Company that is not a limited partnership shall solicit proxies and provide proxy statements for all meetings of Shareholders and shall provide copies of such proxy solicitation to the Exchange. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of LTSE Rule 14.407(a)(4)(F).

- (c) Quorum

Each Company that is not a limited partnership shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 % of the outstanding shares of the Company's common voting stock. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of LTSE Rule 14.407(a)(4)(E).

## ***Rule 14.411. Review of Related Party Transactions***

### **Rule 14.410. Notification of Noncompliance**

A 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 requirements of this LTSE Rule Series 14.400.

### **Rule 14.411. Review of Related Party Transactions**

- (a) Each Company that is not a limited partnership shall conduct an appropriate review and oversight of all related party transactions for potential conflict of interest situations on an ongoing basis by the Company's audit committee or another independent body of the board of directors. For purposes of this LTSE Rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to Item 404 of Regulation S-K under the Act. However, in the case of non-U.S. issuers, the term "related party transactions" shall refer to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.
- (b) Limited partnerships shall comply with the requirements of LTSE Rule 14.407(a)(4)(G).

### **Rule 14.412. Shareholder Approval**

This LTSE Rule sets forth the circumstances under which shareholder approval is required prior to an issuance of securities in connection with: (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. General provisions relating to shareholder approval are set forth in LTSE Rule 14.412(e), and the financial viability exception to the shareholder approval requirement is set forth in LTSE Rule 14.412(f). Exchange-listed Companies and their representatives are encouraged to use the interpretative letter process described in LTSE Rule 14.401(c).

- (a) Acquisition of Stock or Assets of Another Company

Shareholder approval is required prior to the issuance of securities in connection with the acquisition of the stock or assets of another company if:

- (1) where, due to the present or potential issuance of common stock, including shares issued pursuant to an earn-out provision or similar type of provision, or securities convertible into or exercisable for common stock, other than a public offering for cash:

**Rule 14.412. Shareholder Approval**

- (A) 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 of stock or securities convertible into or exercisable for common stock; or
  - (B) 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; or
- (2) any director, officer or Substantial Shareholder (as defined by LTSE Rule 14.412(e)(3)) of the Company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the Company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more.

(b) Change of Control

Shareholder approval is required prior to the issuance of securities when the issuance or potential issuance will result in a change of control of the Company.

(c) Equity Compensation

Shareholder approval is required prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, except for:

- (1) warrants or rights issued generally to all security holders of the Company or stock purchase plans available on equal terms to all security holders of the Company (such as a typical dividend reinvestment plan);
- (2) tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the Company's independent compensation committee or a majority of the Company's Independent Directors; or plans that merely provide a convenient way to purchase shares on the open market or from the Company at Market Value;
- (3) plans or arrangements relating to an acquisition or merger as permitted under Supplementary Material .01 to LTSE Rule 14.412; or

## **Rule 14.412. Shareholder Approval**

- (4) issuances to a person not previously an employee or director of the Company, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the Company, provided such issuances are approved by either the Company's independent compensation committee or a majority of the Company's Independent Directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

### **.01 Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements**

*Employee ownership of Company stock can be an effective tool to align employee interests with those of other Shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing Companies, or Companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. LTSE Rule 14.412(c) ensures that Shareholders have a voice in these situations, given this potential for dilution.*

*LTSE Rule 14.412(c) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:*

- (1) *any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);*
- (2) *any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;*
- (3) *any material expansion of the class of participants eligible to participate in the plan; and*
- (4) *any expansion in the types of options or awards provided under the plan.*

*While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an "evergreen formula"), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.*

## **Rule 14.412. Shareholder Approval**

*As a general matter, when preparing plans and presenting them for shareholder approval, Companies should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.*

*LTSE Rule 14.412(c) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all Shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the Company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under this section.*

*Further, the rule provides an exception for inducement grants to new employees because in these cases a Company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule requires that such issuances be approved by the Company's independent compensation committee or a majority of the Company's Independent Directors. The rule further requires that promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.*

*In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this LTSE Rule 14.412(c). These shares may be used for post-transaction grants of options and other equity awards by the listed Company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. LTSE would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in connection with a merger or acquisition would be counted by LTSE in determining whether the transaction involved the issuance of 20% or more of the Company's outstanding common stock, thus triggering the shareholder approval requirements under LTSE Rule 14.412(a).*

*Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the Company's independent compensation committee or a majority of the Company's Independent Directors. It should also be noted that a Company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.*

## **Rule 14.412. Shareholder Approval**

*For purposes of LTSE Rule 14.412(c) and Supplementary Material .01, the term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.*

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### **(d) Private Placements**

Shareholder approval is required prior to the issuance of securities in connection with a transaction other than a public offering involving:

- (1) the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or Substantial Shareholders of the Company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or
- (2) the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

### **.02 Interpretative Material Regarding the Use of Share Caps to Comply with Rule 14.412**

*LTSE Rule 14.412 limits the number of shares or voting power that can be issued or granted without shareholder approval prior to the issuance of certain securities. (An exception to this LTSE Rule is available to Companies when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise as set forth in LTSE Rule 14.412(f). However, a share cap is not permissible in conjunction with the financial viability exception provided in LTSE*



## **Rule 14.412. Shareholder Approval**

*Rule 14.412(f), because the application to the Exchange and the notice to Shareholders required in the rule must occur prior to the issuance of any common stock or securities convertible into or exercisable for common stock.) Generally, this limitation applies to issuances of 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance. (While the Exchange notes that this issue is generally implicated with respect to these situations, it may also arise with respect to the 5% threshold set forth in LTSE Rule 14.412(a)(2)). Companies sometimes comply with the 20% limitation by placing a “cap” on the number of shares that can be issued in the transaction, such that there cannot, under any circumstances, be an issuance of 20% or more of the common stock or voting power previously outstanding without prior shareholder approval. If a Company determines to defer a shareholder vote in this manner, shares that are issuable under the cap (in the first part of the transaction) must not be entitled to vote to approve the remainder of the transaction. In addition, a cap must apply for the life of the transaction, unless shareholder approval is obtained. For example, caps that no longer apply if a Company is not listed on the Exchange are not permissible under the Rule. Of course, if shareholder approval is not obtained, then the investor will not be able to acquire 20% or more of the common stock or voting power outstanding before the transaction and would continue to hold the balance of the original security in its unconverted form.*

*Companies have also attempted to cap the issuance of shares at below 20% but have also provided an alternative outcome based upon whether shareholder approval is obtained, including, but not limited to a “penalty” or a “sweetener.” Instead, if the terms of a transaction can change based upon the outcome of the shareholder vote, no common shares may be issued prior to the approval of the Shareholders. Companies that engage in transactions with defective caps may be subject to delisting. For example, a Company issues a convertible preferred stock or debt instrument that provides for conversions of up to 20% of the total shares outstanding with any further conversions subject to shareholder approval. However, the terms of the instrument provide that if Shareholders reject the transaction, the coupon or conversion ratio will increase or the Company will be penalized by a specified monetary payment, including a rescission of the transaction. Likewise, a transaction may provide for improved terms if shareholder approval is obtained. The Exchange believes that in such situations the cap is defective because the presence of the alternative outcome has a coercive effect on the shareholder vote, and thus may deprive Shareholders of their ability to freely exercise their vote. Accordingly, the Exchange will not accept a cap that defers the need for shareholder approval in such situations.*

*Companies having questions regarding this policy are encouraged to contact LTSE Regulation, which will provide a written interpretation of the application of LTSE Rules to a specific transaction, upon prior written request of the Company.*

### **.2 Definition of a Public Offering**

*LTSE Rule 14.412(d) provides that shareholder approval is required for the issuance of common stock (or securities convertible into or exercisable for common stock) equal to 20 percent or more of the common stock or 20 percent or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock. Under this LTSE Rule, however, shareholder approval is not required for a “public offering.”*

*Companies are encouraged to consult with LTSE Regulation in order to determine if a particular offering is a “public offering” for purposes of the shareholder approval rules. Generally, a firm commitment underwritten securities offering registered with the Securities and Exchange Commission will be considered a public offering for these purposes. Likewise, any other securities offering which is registered with the Securities and Exchange Commission and*

## **Rule 14.412. Shareholder Approval**

*which is publicly disclosed and distributed in the same general manner and extent as a firm commitment underwritten securities offering will be considered a public offering for purposes of the shareholder approval rules. However, the Exchange staff will not treat an offering as a "public offering" for purposes of the shareholder approval rules merely because they are registered with the Commission prior to the closing of the transaction.*

*When determining whether an offering is a "public offering" for purposes of these rules, LTSE Regulation will consider all relevant factors, including but not limited to:*

- (a) the type of offering (including whether the offering is conducted by an underwriter on a firm commitment basis, or an underwriter or placement agent on a best-efforts basis, or whether the offering is self-directed by the Company);*
  - (b) the manner in which the offering is marketed (including the number of investors offered securities, how those investors were chosen, and the breadth of the marketing effort);*
  - (c) the extent of the offering's distribution (including the number and identity of the investors who participate in the offering and whether any prior relationship existed between the Company and those investors);*
  - (d) the offering price (including the extent of any discount to the market price of the securities offered); and*
  - (e) the extent to which the Company controls the offering and its distribution.*
- 

### **(e) Definitions and Computations Relating to the Shareholder Approval Requirements**

- (1)** For purposes of making any computation in this paragraph, when determining the number of shares issuable in a transaction, all shares that could be issued are included, regardless of whether they are currently treasury shares. When determining the number of shares outstanding, only shares issued and outstanding are considered. Treasury shares, shares held by a subsidiary, and unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants are not considered outstanding.
- (2)** Voting power outstanding as used in this LTSE Rule 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.
- (3)** An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of a Company or party shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a "Substantial Shareholder."

**Rule 14.412. Shareholder Approval**

- (4) Where shareholder approval is required, the minimum vote that will constitute shareholder approval shall be a majority of the total votes cast on the proposal. These votes may be cast in person, by proxy at a meeting of Shareholders or by written consent in lieu of a special meeting to the extent permitted by applicable state and federal law and rules (including interpretations thereof), including, without limitation, Regulations 14A and 14C under the Act. Nothing contained in this LTSE Rule 14.412(e)(4) shall affect a Company's obligation to hold an annual meeting of Shareholders as required by LTSE Rule 14.408.
- (5) Shareholder approval shall not be required for any share issuance if such issuance is part of a court-approved reorganization under the federal bankruptcy laws or comparable foreign laws.

(f) **Financial Viability Exception**

An exception applicable to a specified issuance of securities may be made upon prior written application to LTSE Regulation when:

- (1) the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise; and
- (2) reliance by the Company on this exception is expressly approved by the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors. LTSE Regulation shall respond to each application for such an exception in writing.

A Company that receives such an exception must mail to all Shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required. Such notification shall disclose the terms of the transaction (including the number of shares of common stock that could be issued and the consideration received), the fact that the Company is relying on a financial viability exception to the stockholder approval rules, and that the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors has expressly approved reliance on the exception. The Company shall also make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the same information as promptly as possible, but no later than ten days before the issuance of the securities.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.03 Interpretive Material Regarding Future Priced Securities and Other Securities with Variable Conversion Terms**

## **Rule 14.412. Shareholder Approval**

### Summary

Provisions of this Supplementary Material .03 would apply to any security with variable conversion terms. For example, Future Priced Securities are private financing instruments which were created as an alternative means of quickly raising capital for Companies. The security is generally structured in the form of a convertible security and is often issued via a private placement. Companies will typically receive all capital proceeds at the closing. The conversion price of the Future Priced Security is generally linked to a percentage discount to the market price of the underlying common stock at the time of conversion and accordingly the conversion rate for Future Priced Securities floats with the market price of the common stock. As such, the lower the price of the Company's common stock at the time of conversion, the more shares into which the Future Priced Security is convertible. The delay in setting the conversion price is appealing to Companies who believe that their stock will achieve greater value after the financing is received. However, the issuance of Future Priced Securities may be followed by a decline in the common stock price, creating additional dilution to the existing holders of the common stock. Such a price decline allows holders to convert the Future Priced Security into large amounts of the Company's common stock. As these shares are issued upon conversion of the Future Priced Security, the common stock price may tend to decline further.

For example, a Company may issue \$10 million of convertible preferred stock (the Future Priced Security), which is convertible by the holder or holders into \$10 million of common stock based on a conversion price of 80% of the closing price of the common stock on the date of conversion. If the closing price is \$5 on the date of conversion, the Future Priced Security holders would receive 2,500,000 shares of common stock. If, on the other hand, the closing price is \$1 on the date of conversion, the Future Priced Security holders would receive 12,500,000 shares of common stock.

Unless the Company carefully considers the terms of the securities in connection with several LTSE Rules, the issuance of Future Priced Securities could result in a failure to comply with the Exchange listing standards and the concomitant delisting of the Company's securities from the Exchange. The Exchange understands that Companies do not always appreciate this potential consequence. The LTSE Rules that bear upon the continued listing qualification of a Company and that must be considered when issuing Future Priced Securities include:

- (a) the shareholder approval rules [see LTSE Rule 14.412]
- (b) the voting rights rules [see LTSE Rule 14.413]
- (c) the bid price requirement [see LTSE Rule 14.320(a)(1)]
- (d) the listing of additional shares rules [see LTSE Rule 14.207(e)(2)]
- (e) the change in control rules [see LTSE Rules 14.102 and 14.412(b)]
- (f) the Exchange's discretionary authority rules [see LTSE Rule Series 14.100]

It is important for Companies to clearly understand that failure to comply with any of these rules could result in the delisting of the Company's securities.

This notice is intended to be of assistance to Companies considering financings involving Future Priced Securities. By adhering to the above requirements, Companies can avoid unintended listing qualifications problems. Companies having any questions about this notice should contact LTSE Regulation. The Exchange will provide a Company with a written interpretation of the application of the LTSE Rules to a specific transaction, upon request of the Company.

## **Rule 14.412. Shareholder Approval**

### How the Rules Apply Shareholder Approval

*LTSE Rule 14.412(d) provides, in part: Each Company shall require shareholder approval prior to the issuance of securities in connection with a transaction other than a public offering involving the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or Substantial Shareholders of the Company equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.*

*(The Exchange may make exceptions to this requirement when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and reliance by the Company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.)*

*When the Exchange staff is unable to determine the number of shares to be issued in a transaction, it looks to the maximum potential issuance of shares to determine whether there will be an issuance of 20 percent or more of the common stock outstanding. In the case of Future Priced Securities, the actual conversion price is dependent on the market price at the time of conversion and so the number of shares that will be issued is uncertain until the conversion occurs. Accordingly, staff will look to the maximum potential issuance of common shares at the time the Future Priced Security is issued. Typically, with a Future Priced Security, the maximum potential issuance will exceed 20 percent of the common stock outstanding because the Future Priced Security could, potentially, be converted into common stock based on a share price of one cent per share, or less. Further, for purposes of this calculation, the lowest possible conversion price is below the book or market value of the stock at the time of issuance of the Future Priced Security.*

*Therefore, shareholder approval must be obtained prior to the issuance of the Future Priced Security. Companies should also be cautioned that obtaining shareholder ratification of the transaction after the issuance of a Future Priced Security does not satisfy the shareholder approval requirements.*

*Some Future Priced Securities may contain features to obviate the need for shareholder approval by: (1) placing a cap on the number of shares that can be issued upon conversion, such that the holders of the Future Priced Security cannot, without prior shareholder approval, convert the security into 20% or more of the common stock or voting power outstanding before the issuance of the Future Priced Security (See Supplementary Material .02 to LTSE Rule 14.412, Interpretative Material Regarding the Use of Share Caps to Comply with LTSE Rule 14.412), or (2) placing a floor on the conversion price, such that the conversion price will always be at least as high as the greater of book or market value of the common stock prior to the issuance of the Future Priced Securities. Even when a Future Priced Security contains these features, however, shareholder approval is still required under LTSE Rule 14.412(b) if the issuance will result in a change of control. Additionally, discounted issuances of common stock to officers, directors, employees or consultants require shareholder approval pursuant to LTSE Rule 14.412(c).*

### Voting Rights

*LTSE Rule 14.413 provides:*

*Voting rights of existing Shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance.*

## **Rule 14.412. Shareholder Approval**

Supplementary Material .01 to LTSE Rule 14.413 also provides rules relating to voting rights of the Exchange Companies.

Under the voting rights rules, a Company cannot create a new class of security that votes at a higher rate than an existing class of securities or take any other action that has the effect of restricting or reducing the voting rights of an existing class of securities. The voting rights rules are typically implicated when the holders of the Future Priced Security are entitled to vote on an as-converted basis or when the holders of the Future Priced Security are entitled to representation on the Board of Directors. The percentage of the overall vote attributable to the Future Priced Security holders and the Future Priced Security holders' representation on the board of directors must not exceed their relative contribution to the Company based on the Company's overall book or market value at the time of the issuance of the Future Priced Security. Staff will consider whether a voting rights violation exists by comparing the Future Priced Security holders' voting rights to their relative contribution to the Company based on the Company's overall book or market value at the time of the issuance of the Future Priced Security. If the voting power or the board percentage exceeds that percentage interest, a violation exists because a new class of securities has been created that votes at a higher rate than an already existing class. Future Priced Securities that vote on an as-converted basis also raise voting rights concerns because of the possibility that, due to a decline in the price of the underlying common stock, the Future Priced Security holder will have voting rights disproportionate to its investment in the Company.

It is important to note that compliance with the shareholder approval rules prior to the issuance of a Future Priced Security does not affect whether the transaction is in violation of the voting rights rule. Furthermore, Shareholders can not otherwise agree to permit a voting rights violation by the Company. Because a violation of the voting rights requirement can result in delisting of the Company's securities from the Exchange, careful attention must be given to this issue to prevent a violation of the rule.

### The Bid Price Requirement

The bid price requirement establishes a minimum bid price for issues listed on the Exchange. The LTSE Rules provide that, for an issue to be eligible for continued listing on the Exchange, the minimum bid price per share shall be \$1. An issue is subject to delisting from the Exchange, as described in LTSE Rule Series 14.500 if its bid price falls below \$1.

The bid price rules must be thoroughly considered because the characteristics of Future Priced Securities often exert downward pressure on the price of the Company's common stock. Specifically, dilution from the discounted conversion of the Future Priced Security may result in a significant decline in the price of the common stock. Furthermore, there appear to be instances where short selling has contributed to a substantial price decline, which, in turn, could lead to a failure to comply with the bid price requirement. (If used to manipulate the price of the stock, short selling by the holders of the Future Priced Security is prohibited by the antifraud provisions of the securities laws and by the LTSE Rules and may be prohibited by the terms of the placement.)

### Listing of Additional Shares

LTSE Rule 14.207(e)(2) provides:

The Company shall be required to notify the Exchange on the appropriate form no later than 15 calendar days prior to: establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers,

## **Rule 14.412. Shareholder Approval**

*directors, employees, or consultants without shareholder approval; issuing securities that may potentially result in a change of control of the Company; issuing any common stock or security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or Substantial Shareholder of the Company has a 5% or greater interest (or if such persons collectively have a 10% or greater interest) in the Company to be acquired or in the consideration to be paid; or entering into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis.*

*Companies should be cognizant that under this LTSE Rule notification is required at least 15 days prior to issuing any security (including a Future Priced Security) convertible into shares of a class of securities already listed on the Exchange. Failure to provide such notice can result in a Company's removal from the Exchange.*

### Public Interest Concerns

*LTSE Rule 14.101 provides:*

*The Exchange is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The Exchange stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. The Exchange Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives.*

*The Exchange, therefore, in addition to applying the enumerated criteria set forth in the Listing Rules, has broad discretionary authority over the initial and continued listing of securities in the Exchange in order to maintain the quality, transparency and integrity of and public confidence in its market; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and to protect investors and the public interest; and to protect the safety and security of the Exchange and its employees. The Exchange may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.*

*The returns on Future Priced Securities may become excessive compared with those of public investors in the Company's common securities. In egregious situations, the use of a Future Priced Security may raise public interest concerns under LTSE Rule 14.101. In addition to the demonstrable business purpose of the transaction, other factors that the Exchange staff will consider in determining whether a transaction raises public interest concerns include: (1) the amount raised in the transaction relative to the Company's existing capital structure; (2) the dilutive effect of the transaction on the existing holders of common stock; (3) the risk undertaken by the Future Priced Security investor; (4) the relationship between the Future Priced Security investor and the Company; (5) whether the transaction was preceded by other similar transactions; and (6) whether the transaction is consistent with the just and equitable principles of trade.*

## **Rule 14.412. Shareholder Approval**

*Some Future Priced Securities may contain features that address the public interest concerns. These features tend to provide incentives to the investor to hold the security for a longer time period and limit the number of shares into which the Future Priced Security may be converted.*

*Such features may limit the dilutive effect of the transaction and increase the risk undertaken by the Future Priced Security investor in relationship to the reward available.*

### *Business Combinations with non-LTSE Entities Resulting in a Change of Control* *LTSE Rule*

*14.102(a) provides:*

*A Company must apply for initial listing in connection with a transaction whereby the Company combines with, or into, an entity that is not an LTSE Company, resulting in a change of control of the Company and potentially allowing such entity to obtain an Exchange Listing. In determining whether a change of control has occurred, the Exchange shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the Company. The Exchange shall also consider the nature of the businesses and the relative size of the LTSE Company and entity that is not an LTSE Company. The Company must submit an application for the post-transaction entity with sufficient time to allow the Exchange to complete its review before the transaction is completed. If the Company's application for initial listing has not been approved prior to consummation of the transaction, the Exchange will issue a Staff Determination Letter as set forth in LTSE Rule 14.501 and begin delisting proceedings pursuant to LTSE Rule 14.500.*

*This provision, which applies regardless of whether the Company obtains shareholder approval for the transaction, requires Companies to qualify under the initial listing standards in connection with a combination that results in a change of control. It is important for Companies to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in the holders of the Future Priced Securities obtaining control of the listed Company. In such event, a Company may be required to re-apply for initial listing and satisfy all initial listing requirements.*

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## **Rule 14.413. Voting Rights**

Voting rights of existing Shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.

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**\* \* \* \* \* Supplementary Material \* \* \* \* \***

### **.01 Voting Rights Policy**



## **Rule 14.413. Voting Rights**

*The following Voting Rights Policy is based upon, but more flexible than, former Rule 19c-4 under the Act. Accordingly, the Exchange will permit corporate actions or issuances by the Exchange Companies that would have been permitted under former Rule 19c-4, as well as other actions or issuances that are not inconsistent with this policy. In evaluating such other actions or issuances, the Exchange will consider, among other things, the economics of such actions or issuances and the voting rights being granted. 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. The text of the Exchange Voting Rights Policy is as follows:*

### *Companies with Dual Class Structures.*

*The restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and Companies with existing dual class capital structures would generally be permitted to issue additional shares of the existing super voting stock without conflict with this policy.*

### *Consultation with the Exchange.*

*Violation of the Exchange Voting Rights Policy could result in the loss of a Company's Exchange or public trading market. The policy can apply to a variety of corporate actions and securities issuances, not just super voting or so-called "time phase" voting common stock. While the policy will continue to permit actions previously permitted under former Rule 19c-4, it is extremely important that the LTSE Companies communicate their intentions to their Exchange representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the policy. The Exchange urges Companies listed on the Exchange not to assume, without first discussing the matter with the Exchange staff, that a particular issuance of common or preferred stock or the taking of some other corporate action will necessarily be consistent with the policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the policy be furnished to the Exchange for review prior to formal filing.*

### *Review of Past Voting Rights Activities.*

*In reviewing an application for initial qualification for listing of a security in the Exchange, the Exchange will review the Company's past corporate actions to determine whether another self-regulatory organization (SRO) has found any of the Company's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, the Exchange may take any appropriate action, including the denial of the application or the placing of restrictions on such listing. The Exchange will also review whether a Company seeking initial listing of a security in the Exchange has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, the Exchange will consider that fact in determining its response to any ruling or interpretation that the Company may request on the same or similar transaction.*

### *Non-U.S. Companies.*

*The Exchange will accept any action or issuance relating to the voting rights structure of a non-U.S. Company that is in compliance with the Exchange's requirements for domestic Companies or that is not prohibited by the Company's home country law.*

**Rule 14.414. Internal Audit Function**

- (a) Each Company must establish and maintain an internal audit function to provide management and the audit committee with ongoing assessments of the Company's risk management process and system of internal control. The Company may choose to outsource this function to a third party service provider other than its independent auditor. The audit committee must meet periodically with the internal auditors (or other personnel responsible for this function) and assist the Board in its oversight of the performance of this function. The audit committee should also discuss with the outside auditor the responsibilities, budget and staffing of the internal audit function.
- (b) Transition Periods
  - (1) A Company listing in conjunction with its initial public offering or a spin-off transaction must comply with the requirements of LTSE Rule 14.414(a) within one year of the listing date.
  - (2) A Company previously registered pursuant to Section 12(b) of the Exchange Act must satisfy the requirements of LTSE Rule 14.414(a) within one year of the listing date to the extent the national securities exchange on which it was listed did not have the same requirement. If the other exchange had a substantially similar requirement and the company was afforded a transition period that had not expired, the company will have the same transition period as would have been available to it on the other exchange.

**Rule 14.425. Long-Term Policies**

- (a) Each Company must adopt and publish the following policies:
  - (1) Long-Term Stakeholder Policy: a policy explaining how the Company operates its business to consider all of the stakeholders critical to its long-term success, including:
    - (A) which stakeholder groups the Company considers critical to long-term success;
    - (B) the Company's impact on the environment and its community;
    - (C) the Company's approach to diversity and inclusion;
    - (D) the Company's approach to investing in its employees; and

**Rule 14.425. Long-Term Policies**

- (E) the Company's approach to rewarding its employees and other stakeholders for contributing to the Company's long-term success.
  - (2) Long-Term Strategy Policy: a policy explaining how the Company prioritizes long-term strategic decision-making and long-term success, including discussion of:
    - (A) what time horizon the Company considers long-term;
    - (B) how this time horizon relates to the Company's strategic plans;
    - (C) how the Company aligns success metrics with its long-term time horizon; and
    - (D) how the Company implements long-term prioritization throughout the organization.
  - (3) Long-Term Compensation Policy: a policy explaining the Company's alignment of executive compensation and board compensation with the Company's long-term success and long-term success metrics.
  - (4) Long-Term Board Policy: a policy explaining the engagement of the Company's board of directors in the Company's long-term focus, including discussion of whether the board and/or which board committee(s), if any, have explicit oversight of and responsibility for long-term strategy and success metrics.
  - (5) Long-Term Investor Policy: a policy explaining how the Company engages with long-term investors.
- (b) Companies will have flexibility in developing what they believe to be appropriate policies for their businesses; however, each of the policies required in Section 14.425(a) must be consistent with the following principles:
- (1) Long-term focused companies should consider a broader group of stakeholders and the critical role they play in one another's success;
  - (2) Long-term focused companies should measure success in years and decades and prioritize long-term decision-making;
  - (3) Long-term focused companies should align executive compensation and board compensation with long-term performance;
  - (4) Boards of directors of long-term focused companies should be engaged in and have explicit oversight of long-term strategy; and
  - (5) Long-term focused companies should engage with their long-term shareholders.

### **Rule 14.500. Failure to Meet Listing Standards**

- (c) Each Company must review the policies required by this Rule 14.425 at least annually and make such policies available publicly and free of charge on or through its website. In addition, each Company must disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its annual report on Form 10-K (or in the case of a foreign private issuer, Form 20-F) filed with the SEC, that these policies are available on or through its website and provide the website address.

*(Adopted by SR-LTSE-2019-01 eff. August 21, 2019)*

### **Rule 14.500. Failure to Meet Listing Standards**

- (a) Securities of a Company that does not meet the listing standards set forth in Chapter 14 are subject to delisting from the Exchange. This Section sets forth procedures for the independent review, suspension, and delisting of Companies that fail to satisfy one or more standards for continued listing and thus are "deficient" with respect to the listing standards.

LTSE Regulation is responsible for identifying deficiencies that may lead to delisting; notifying the Company of the deficiency; and issuing Staff Delisting Determinations and Public Reprimand Letters. Rule 14.501 contains provisions regarding LTSE Regulation's process for notifying Companies of different types of deficiencies and their corresponding consequences.

The Listings Review Committee, upon timely request by a Company, will review a Staff Delisting Determination or Public Reprimand Letter at an oral or written hearing, and issue a Decision that may, among other things, grant an "exception" to the Exchange's listing standards or affirm a delisting. Rule 14.502 contains provisions relating to the hearings process.

Procedures related to SEC notification of the Exchange's final Delisting Determinations are discussed in LTSE Rule 14.503. Rules applicable to the Listings Review Committee and Advisors are provided in LTSE Rule 14.504 and general information relating to the adjudicatory process is provided in LTSE Rule 14.505.

A Company's failure to maintain compliance with the applicable provisions of Chapter 14 will result in the termination of the listing unless an exception is granted to the Company, as described below. The termination of the Company's listing will become effective in accordance with the procedures set forth herein, including LTSE Rule 14.503.

- (b) Definitions
  - (1) "Advisor" means an individual employed by the Exchange who is advising the Listings Review Committee with respect to a proceeding under this section.

### **Rule 14.500. Failure to Meet Listing Standards**

- (2) "Decision" means a written decision of an Adjudicatory Body.
- (3) "LTSE Regulation" is the department of the Exchange responsible for evaluating Company compliance with quantitative and qualitative listing standards and determining eligibility for initial and continued listing of a Company's securities.
- (4) The "Listings Review Committee" is the committee designated by the Exchange's Board of Directors to review Company appeals of Staff Delisting Determinations and Public Reprimand Letters. The Listings Review Committee shall be composed of at least five members. Any action by the Listings Review Committee shall require a quorum, which shall be at least three members.
- (5) "Public Reprimand Letter" means a letter issued by Staff or a Decision of the Listings Review Committee in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and Staff or the Listings Review Committee determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, Staff or the Listings Review Committee will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.
- (6) "Staff" refers to employees of LTSE Regulation.
- (7) "Staff Delisting Determination" or "Delisting Determination" is a written determination by LTSE Regulation to delist a listed Company's securities for failure to meet a continued listing standard.

### **Rule 14.501. Notification of Deficiency by LTSE Regulation**

- (a) When LTSE Regulation determines that a Company does not meet a listing standard set forth in Chapter 14, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:
  - (1) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting;
  - (2) notifications of deficiencies for which a Company may submit a plan of compliance for staff review;
  - (3) notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and

**Rule 14.501. Notification of Deficiency by LTSE Regulation**

- (4) Public Reprimand Letters, except such notification type is not available for unresolved deficiencies from the standards of Rules 14.207(c) {Obligation to File Periodic Financial Reports}, 14.407(a)(4)(D) {Partner Meetings of Limited Partnerships} and 14.408(a) {Meetings of Shareholders}.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(b) Information Contained in Deficiency Notification and Delisting Determination

Deficiency notifications and Delisting Determinations will:

- (1) inform the Company of the factual bases for Staff's determination of deficiency or delisting, and the quantitative or qualitative standard the Company has failed to satisfy;
- (2) provide the Company with instructions regarding its obligations to disclose the deficiency under Exchange Listing Rules; and
- (3) inform the Company:
  - (A) in the case of a Staff Delisting Determination, that the Company's securities will be suspended as of a date certain; the Company has a right to request review of the Delisting Determination by the Listings Review Committee; and that a request for review within seven days (as set forth in LTSE Rule 14.502(a)(1)) will stay the suspension;
  - (B) in the case of a deficiency for which the Company may submit a plan of compliance for review by Staff, the deadline by which a plan must be submitted;
  - (C) in the case of a deficiency for which the Company is entitled to an automatic cure or compliance period, the expiration date of the cure or compliance period; and
  - (D) in the case of a Public Reprimand Letter, an explanation of why Staff concluded the letter is appropriate and the Company's right to request review of the Letter by Listings Review Committee.

(c) Company Disclosure Obligations

## **Rule 14.501. Notification of Deficiency by LTSE Regulation**

A Company that receives a notification of deficiency, Staff Delisting Determination, or Public Reprimand Letter is required to make a public announcement disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. A Company that receives a notification of deficiency or Staff Delisting Determination related to the requirement to file a periodic report contained in LTSE Rule 14.207(c)(1) or (2) is required to make the public announcement by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, in addition to filing any Form 8-K required by SEC rules. In all other cases, the Company may make the public announcement either by filing a Form 8-K, where required by SEC rules, or by issuing a press release. As described in LTSE Rule 14.207(b)(1) and Supplementary Material .01 to LTSE Rule 14.207 (Disclosure of Material Information), the Company must notify LTSE Regulation about the announcement through the electronic disclosure submission system available on the Exchange's Web site, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during System Hours (as defined in LTSE Rule 1.160), the Company must notify LTSE Regulation at least ten minutes prior to the announcement. If the public announcement is made outside of System Hours (as defined in LTSE Rule 1.160), the Company must notify LTSE Regulation of the announcement at least 10 minutes prior to the start of System Hours (as defined in LTSE Rule 1.160). The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the notification.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

### **.01 Disclosure of Written Notice of Staff Determination**

*LTSE Rule 14.501(c) requires that a Company make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of (i) a notice that the Company does not meet a listing standard set forth in Chapter 14, (ii) a Staff Delisting Determination to limit or prohibit continued listing of the Company's securities under LTSE Rule 14.501 as a result of the Company's failure to comply with the continued listing requirements, or (iii) a Public Reprimand Letter; provided, however, that if the notification relates to a failure to meet the requirements of LTSE Rules 14.207(c)(1) or (2), the Company must make the public announcement by issuing a press release. Such public announcement shall be made as promptly as possible, but not more than four business days following the receipt of the notification, Staff Delisting Determination, or Public Reprimand Letter, as applicable. In addition to containing all disclosure required by Form 8-K, if applicable, the public announcement must describe each specific basis and concern identified by LTSE Regulation in its determination that the Company does not meet the listing standard and identify the Rules upon which the deficiency is based. For example, if the LTSE Regulation determines to delist a Company based on its discretionary authority under LTSE Rule 14.101, the Company must include in its public announcement the specific concerns cited in the Staff Delisting Determination. In addition, a Company may provide its own analysis of the issues raised in the Staff Delisting Determination.*

## **Rule 14.501. Notification of Deficiency by LTSE Regulation**

*If the public announcement is not made by the Company within the time allotted or does not include all of the required information, trading of its securities shall be halted (if not already halted), even if the Company appeals the Staff Delisting Determination or Public Reprimand Letter as set forth in LTSE Rule 14.502, and LTSE Regulation may make a public announcement with the required information. If the company's failure to make this public announcement is the only basis for a trading halt, LTSE would ordinarily resume trading if LTSE Regulation makes the public announcement. If the Company fails to make the public announcement by the time that the Hearings Panel issues its Decision, that Decision will also determine whether to delist the Company's securities for failure to make the public announcement.*

*LTSE Rule 14.501(c) does not relieve a Company of its disclosure obligation under the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the Company consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.*

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### **(d) Types of Deficiencies and Notifications**

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

#### **(1) Deficiencies that Immediately Result in a Staff Delisting Determination.**

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

- (A) a Company fails to timely solicit proxies; or**
- (B) Staff has determined, under its discretionary authority in LTSE Rule 14.101, that the Company's continued listing raises a public interest concern.**

#### **(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review.**

- (A) Submission of Plan of Compliance.** Unless the Company is currently under review by the Listings Review Committee for a Staff Delisting Determination, LTSE Regulation may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (v) below. In accordance with Rule 14.501(d)(2)(C), plans provided pursuant to subsections (i) through (iv) below must be provided generally within 45 calendar days, and in accordance with Rule



**Rule 14.501. Notification of Deficiency by LTSE Regulation**

14.501(d)(2)(F), plans provided pursuant to subsection (v) must be provided generally within 60 calendar days.

- (i) all quantitative deficiencies from standards that do not provide a compliance period;
  - (ii) deficiencies from the standards of LTSE Rules 14.405 (Board of Directors and Committees) or 14.407(a)(4)(C) (Independent Directors/Audit Committee of Limited Partnerships) where the cure period of the Rule is not applicable;
  - (iii) deficiencies from the standards of LTSE Rules 14.408(a) {Meetings of Shareholders}, 14.408(c) {Quorum}, 14.411{Review of Related Party Transactions}, 14.412 {Shareholder Approval}, 14.207(c)(3) {Auditor Registration}, 14.208(a) {Direct Registration Program}, 14.406 {Code of Conduct}, 14.407(a)(4)(D) {Partner Meetings of Limited Partners}, 14.407(a)(4)(E) {Quorum of Limited Partnerships}, 14.407(a)(4)(G) {Related Party Transactions of Limited Partnerships}, 14.413 {Voting Rights}, or 14.414 {Internal Audit Function}; or
  - (iv) failure to make the disclosure required by LTSE Rule 14.207(b)(3); or
  - (v) failure to file periodic reports as required by LTSE Rule 14.207(c)(1) or (2).
- (B) Staff Alternatives Upon Review of Plan. Staff may request such additional information from the Company as is necessary to make a determination, as described below. In cases other than filing delinquencies and annual meeting deficiencies, which are governed by LTSE Rule 14.501(d)(2)(F) and 14.501(d)(2)(G) respectively, upon review of a plan of compliance, Staff may either:
- (i) grant an extension of time to regain compliance not greater than 180 calendar days from the date of Staff's initial notification, unless the Company is currently under review by the Listings Review Committee for a Staff Delisting Determination. If Staff grants an extension, it will inform the Company in writing of the basis for granting the extension and the terms of the extension;
  - (ii) issue a Staff Delisting Determination letter that includes a description of the basis for denying the extension; or
  - (iii) issue a Public Reprimand Letter, as defined in LTSE Rule 14.500(b)(5).

**Rule 14.501. Notification of Deficiency by LTSE Regulation**

- (C) **Timeline for Submission of Compliance Plans.** Except for deficiencies from the standards of LTSE Rule 14.207(c)(1) or (2), Staff's notification of deficiencies that allow for compliance plan review will inform the Company that it has 45 calendar days to submit a plan to regain compliance with the Exchange's listing standard(s). Staff may extend this deadline for up to an additional 5 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.
- (D) **Restrictions on Compliance Plans for Certain Deficiencies.** Staff will not accept a plan to achieve compliance with deficiencies in total assets and total revenue, since compliance requires stated levels of assets and revenues during completed fiscal years and therefore can only be demonstrated through audited financial statements. Similarly, a Company may not submit a plan relying on partial-year performance to demonstrate compliance with these standards. A Company may, however, submit a plan that demonstrates current or near-term compliance with the listing requirement relating to stockholders' equity or Market Value of Listed Securities.
- (E) **Failure to Meet the Terms of a Staff Extension.** If the Company does not regain compliance within the time period provided by all applicable Staff extensions, Staff will immediately issue a Staff Delisting Determination indicating the date on which the Company's securities will be suspended unless it requests review by a Hearings Panel.
- (F) **Filing Delinquencies.** In the case of deficiencies from the standards of LTSE Rule 14.207(c)(1) or (2):
  - (i) Staff's notice shall provide the Company with 60 calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the Company shall not be provided with an opportunity to submit such a plan if review under LTSE Rule 14.500 of a prior Staff Delisting Determination with respect to the Company is already pending. Staff may extend this deadline for up to an additional 15 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.
  - (ii) The maximum additional time provided by all exceptions granted by Staff for a deficiency described in paragraph (i) above is 180 calendar days from the due date of the first late periodic report (as extended by Rule 12b-25 under the Act, if applicable). In determining whether to grant an

**Rule 14.501. Notification of Deficiency by LTSE Regulation**

exception, and the length of any such exception, Staff will consider, and the Company should address in its plan of compliance, the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

- (G) Annual Meeting. In the case of deficiencies from the standards of Rules 14.408(a) and 14.407(a)(4)(D):
- (i) Staff's notice shall provide the Company with 45 calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the Company shall not be provided with an opportunity to submit such a plan if review under the Rule Series 14.500 of a prior Staff Delisting Determination with respect to the Company is already pending. Staff may extend this deadline for up to an additional 15 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.
  - (ii) The maximum additional time provided by all exceptions granted by Staff is 180 calendar days from the deadline to hold the annual meeting (one year after the end of the Company's fiscal year). In determining whether to grant an exception, and the length of any such exception, Staff will consider, and the Company should address in its plan of compliance, the Company's specific circumstances, including the likelihood that the Company would be able to hold an annual meeting within the exception period, the Company's past compliance history, the reasons for the failure to hold the annual meeting timely, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.
- (3) Deficiencies for which the Rules Provide a Specified Cure or Compliance Period.

### **Rule 14.501. Notification of Deficiency by LTSE Regulation**

With respect to deficiencies related to the standards listed in (A) - (E) below, Staff's notification will inform the Company of the applicable cure or compliance period provided by these Rules and discussed below. If the Company does not regain compliance within the specified cure or compliance period, LTSE Regulation will immediately issue a Staff Delisting Determination letter.

- (A) **Bid Price Requirement.** A failure to meet the continued listing requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in LTSE Rule 14.501(d)(3)(F).
- (B) **Market Makers.** A failure to meet the continued listing requirement for a number of Market Makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.
- (C) **Market Value of Listed Securities.** A failure to meet the continued listing requirements for Market Value of Listed Securities shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 180 day compliance period.
- (D) **Market Value of Publicly Held Shares.** A failure to meet the continued listing requirement for Market Value of Publicly Held Shares shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 180 day compliance period.

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- (E) Independent Director and Audit Committee Rules. If a Company fails to meet the majority board independence requirement in LTSE Rule 14.405(b)(1) due to one vacancy, or because one director ceases to be independent for reasons beyond his/her reasonable control, LTSE Regulation will promptly notify the Company and inform it has until the earlier of its next annual shareholders meeting or one year from the event that caused the deficiency to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

If a Company fails to meet the audit committee composition requirements in LTSE Rule 14.405(c)(2) because an audit committee member ceases to be independent for reasons outside his/her control, LTSE Regulation will promptly notify the Company and inform it that has until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure, to cure the deficiency. If the Company fails to meet the audit committee composition requirement due to one vacancy on the audit committee, and the Company is not relying upon a cure period for another member, LTSE Regulation will promptly notify the Company and inform it that it has until the earlier of its next annual shareholders meeting or one year from the event that caused the failure to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

- (F) Staff Discretion Relating to the Price-based Requirements. If a Company fails to meet the Market Value of Listed Securities, Market Value of Publicly Held Shares, or Bid Price requirements, each of which is related to the Company's security price and collectively called the "Price-based Requirements," compliance is generally achieved by meeting the requirement for a minimum of ten consecutive business days. However, Staff may, in its discretion, require a Company to satisfy the applicable Price-based Requirement for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the Company has demonstrated an ability to maintain long-term compliance. In determining whether to require a Company to meet the applicable Price-based-requirement beyond ten business days, Staff may consider all relevant facts and circumstances, including without limitation:

**Rule 14.501. Notification of Deficiency by LTSE Regulation**

- (i) the margin of compliance (the amount by which a Company exceeds the applicable Price-based requirement);
- (ii) the trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price);
- (iii) the Market Maker quoting activity (the number of Market Makers quoting at or above \$1.00 or the minimum price necessary to satisfy another Price-based Requirement; and the size of their quotes); and
- (iv) the trend of the stock price (is it up or down).

(4) Public Reprimand Letter.

Staff's notification may be in the form of a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and Staff determines that delisting is an inappropriate sanction. In determining whether to issue a public reprimand letter, LTSE Regulation will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(e) Additional Deficiencies

LTSE Regulation continues to evaluate the compliance of Companies while they are under review by the Listings Review Committee and may identify additional deficiencies. Upon identification of an additional deficiency, Staff will issue an additional notification of deficiency to the Company and send a copy to the Listings Review Committee.

- (1) Staff's notification of the additional deficiency will conform to the requirements set forth in LTSE Rule 14.501(b) if:
  - (A) the matter under review by the Listings Review Committee is a Public Reprimand Letter; or
  - (B) the additional deficiency identified is one that has an automatic cure or compliance period. If the additional deficiency is one that would in the normal course result in immediate suspension and delisting, or one for which the Company may submit a compliance plan to Staff for review, Staff's notification will instruct the Company to address the issue to the Listings Review Committee at its hearing, unless the hearing for the original deficiency has

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already taken place. If the hearing has already taken place, Staff's notification will instruct the Company to provide in writing, within a specified time period, a submission that addresses the deficiency to the Listings Review Committee before which its matter is pending.

*(Amended by SR-LTSE-2019-04 eff. December 5, 2019)*

**Rule 14.502. Review of Staff Determinations by the Listings Review Committee**

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by LTSE Regulation it may request in writing that the Listings Review Committee review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before the Listings Review Committee, describes the Listings Review Committee and the possible outcomes of a hearing, and sets forth Listings Review Committee procedures.

(a) Procedures for Requesting and Preparing for a Hearing

(1) Timely Request Stays Delisting

- (A) A Company may, within seven calendar days of the date of the Staff Delisting Determination notification or Public Reprimand Letter request a written or oral hearing before the Listings Review Committee to review the Staff Delisting Determination or Public Reprimand Letter. Subject to the limitation in paragraph (B) below, a timely request for a hearing will stay the suspension and delisting action pending the issuance of a written Listings Review Committee Decision. Requests for hearings should be submitted in writing to the General Counsel.
- (B) A request for a hearing shall ordinarily stay the delisting action pending the issuance of a Listings Review Committee Decision. However, if the Staff Delisting Determination relates to deficiencies from the standards of LTSE Rule 14.207(c)(1) or (2), which require a Company to timely file its periodic reports with the Commission, the delisting action will only be stayed for 15 calendar days from the deadline to request a hearing unless the Company specifically requests and the Listings Review Committee grants a further stay. A request for a further stay must include an explanation of why such a stay would be appropriate and should be included in the Company's request for a hearing. Based on that submission and any recommendation provided by Staff, the Listings Review Committee will determine whether to grant the Company a further stay. In determining whether to grant the stay, the Listings Review Committee will consider the Company's specific circumstances, including the likelihood that the filing can be made within any exception period

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that could subsequently be granted, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. The Listings Review Committee will notify the Company of its conclusion as soon as is practicable, but in no event more than 15 calendar days following the deadline to request the hearing. In the event the Listings Review Committee determines not to grant the Company a stay, the Company's securities will be immediately suspended and will remain suspended unless the Listings Review Committee Decision issued after the hearing determines to reinstate the securities.

(2) Failure to Request Results in Immediate Delisting

If a Company fails to request in writing a hearing within seven calendar days, it waives its right to request review of a Delisting Determination or Public Reprimand Letter. In that event, LTSE Regulation will take action to suspend trading of the securities and follow procedures to delist the securities.

(3) Fees

Within 15 calendar days of the date of the Staff Delisting Determination or Public Reprimand Letter the Company must submit a hearing fee to the Exchange, to cover the cost of the hearing, as follows:

- (A) when the Company has requested a written hearing, \$1,000; or
- (B) when the Company has requested an oral hearing, whether in person or by telephone, \$5,000.

(4) Scheduling of Hearings

The General Counsel will schedule hearings to take place, to the extent practicable, within 45 days of the request for a hearing, at a location determined by the General Counsel. The General Counsel will send written acknowledgment of the Company's hearing request and inform the Company of the date, time, and location of the hearing, and deadlines for written submissions to the Listings Review Committee. The Company will be provided at least ten calendar days' notice of the hearing unless the Company waives such notice.

(5) Submissions from Company

The Company may submit to the General Counsel a written plan of compliance and request that the Listings Review Committee grant an exception to the listing



**Rule 14.502. Review of Staff Determinations by the  
Listings Review Committee**

standards for a limited time period, as permitted by LTSE Rule 14.502(b)(1)(A) or may set forth specific grounds for the Company's contention that the issuance of a Staff Delisting Determination or Public Reprimand Letter was in error, and may also submit public documents or other written material in support of its position, including any information not available at the time of the Staff Determination. The Listings Review Committee will review the written record, as described in LTSE Rule 14.505(a), before the hearing.

(6) Presentation at Hearing

At an oral hearing, the Company may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons, and the Listings Review Committee may question any representative appearing at the hearing. Hearings are generally scheduled to last one hour, but the Hearings Panel may extend the time. The General Counsel or his or her designee will arrange for and keep on file a transcript of oral hearings.

(b) Scope of the Listing Review Committee's Discretion

(1) The Listing Review Committee may, where it deems appropriate:

- (A) grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted;
- (B) suspend and delist the Company's securities;
- (C) issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and the Listings Review Committee determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Listings Review Committee will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations;
- (D) find the Company in compliance with all applicable listing standards; or
- (E) in the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Listings Review Committee may grant an

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exception for a period not to exceed 360 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Listings Review Committee will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

- (F) In the case of a Company or Limited Partnership that fails to hold an annual meeting, the Listings Review Committee may grant an exception for a period not to exceed 360 days from the deadline to hold the annual meeting (one year after the end of the Company's fiscal year).
  - (2) The Listings Review Committee may consider any failure to meet any quantitative or qualitative standard for continued listing, including failures previously not considered by Staff. The Company will be given written notice of such consideration and an opportunity to respond.
  - (3) Under the authority described in LTSE Rule 14.101, the Listings Review Committee may subject the Company to additional or more stringent criteria for the continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for continued listing on the Exchange.
- (c) Listings Review Committee Procedures
- (1) Decision
- After the hearing, the General Counsel, on behalf of the Listings Review Committee, will issue a Decision that meets the requirements of LTSE Rule 14.505(c) and has been approved by at least a majority of the members of the Listings Review Committee in attendance. The Listings Review Committee Decision shall be promptly provided to the Company, and is effective immediately upon issuance, unless it specifies to the contrary. If the Listings Review Committee is deadlocked, the Chair's vote shall count twice, or if the Chair is not in

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attendance, the vote of the next most senior member of the Listings Review Committee shall count twice.

(2) Form 25 Notification of Delisting

If the Listings Review Committee issues a Decision to delist the Company's securities, LTSE Regulation will immediately take action to suspend trading of the securities, unless the Decision specifies to the contrary, and the Exchange will follow the procedures described in LTSE Rule 14.503 to submit an application on Form 25 to the SEC to strike the security from listing.

(3) Procedures Applicable for Recurring Deficiencies

(A) Listings Review Committee Monitor

The Listings Review Committee may, after a Company regains compliance with all applicable listing standards, monitor the Company's continued compliance for up to one year after the compliance date, if the Listings Review Committee concludes that there is a likelihood that the issuer will fail to maintain compliance with one or more listing standards during that period. If the Listings Review Committee or LTSE Regulation determines that a Company under Listings Review Committee monitor fails any listing standard during the monitor period, the Staff will issue a Staff Delisting Determination and the General Counsel or his or her designee will promptly schedule a new hearing. The hearing may be oral or written, at the Company's election.

Notwithstanding LTSE Rule 14.501(d)(2), the Company will not be permitted to provide LTSE Regulation with a plan of compliance with respect to any deficiency that arises during the monitor period, and LTSE Regulation will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency. The Listings Review Committee will consider the Company's compliance history when rendering its Decision.

(B) No Listings Review Committee Monitor

If the Listings Review Committee has not opted to monitor a Company that has regained compliance with the listing standards requiring the Company to maintain certain levels of stockholders' equity or to timely file periodic reports, and within one year of the date the Company regained compliance with such listing standard, LTSE Regulation finds the Company again out of compliance with the requirement that was the subject of the exception, then, notwithstanding LTSE Rule 14.501(d)(2), LTSE Regulation will not allow the

**Rule 14.502. Review of Staff Determinations by the Listings Review Committee**

Company to provide it with a plan of compliance or grant additional time for the Company to regain compliance. Rather, LTSE Regulation will promptly issue a Staff Delisting Determination, and the Company may request review by the Listings Review Committee. The Listings Review Committee will consider the Company's compliance history when rendering its Decision.

(4) Request for Listings Review Committee Reconsideration

A Company may request, in writing, that the Listings Review Committee reconsider a Listings Review Committee Decision only upon the basis that a mistake of material fact existed at the time of the Listings Review Committee Decision. The Company's request for reconsideration shall be made within seven calendar days of the date of issuance of the Listings Review Committee Decision. A Company's request for reconsideration will not stay a delisting determination or suspension of trading of the Company's securities, unless the Listings Review Committee, before the scheduled date for suspension, issues a written determination staying the suspension and/or reversing the determination to delist.

If the Listings Review Committee grants a Company's reconsideration request, it will issue a modified Decision meeting the requirements of LTSE Rule 14.505(c) within 15 calendar days of the date of the original Listings Review Committee Decision.

**Rule 14.503. Finality of Delisting Determination**

When the Exchange has made a final determination to delist a Company's securities, it will follow procedures consistent with the Act to strike the security from listing. The Exchange's determination to delist a Company's securities is final when, after a Delisting Determination has been issued, all available reconsideration procedures and periods available under these Rules have expired.

The Exchange will issue a press release and post a notice on its website announcing its final determination to remove a security from listing, consistent with Rule 12d2-2 under the Act. Under Rule 12d2-2, the Exchange must disseminate this public notice not less than 10 days before the delisting becomes effective and maintain the website notice until the delisting is effective. Following the public notification, the Exchange will file an application on Form 25 with the Commission to delist the security, and will promptly provide a copy of that Form 25 to the Company. The delisting of the security becomes effective 10 days after the Form 25 is filed pursuant to Rule 12d2-2(d)(1) under the Act, unless the Commission postpones the delisting pursuant to Rule 12d2-2(d)(3).

**Rule 14.504. Rules Applicable to the Listings Review Committee and Advisors**

**Rule 14.504. Rules Applicable to the Listings Review Committee and Advisors**

(a) Ex Parte Communications

(1) No Ex parte Communications

No member of the staff of LTSE Regulation or its counsel, and no Company representative will make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding under this Section to the Listings Review Committee, any member thereof or any Advisor. Similarly, neither the Listings Review Committee, any member thereof nor any Advisor will make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to a Company representative, a member of the staff of LTSE Regulation or its counsel.

(2) If an ex parte communication as described in paragraph (1) is made, received or caused to be made, the person making such ex parte communication will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of LTSE Regulation or the Company, as applicable, will be permitted to respond to the ex parte communication, and any response will be placed in the record of the proceeding.

(b) Recusal or Disqualification

No person will participate as a member of the Listings Review Committee, the staff of LTSE Regulation, or Advisor to either thereof, in a matter as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the person will recuse himself or herself, or will be disqualified. The Chair of the Listings Review Committee shall have authority to order the disqualification of a member of the Listings Review Committee and a majority of the Listings Review Committee excluding the Chair, shall have authority to order the disqualification of the Chair. A Company that has requested a review by the Listings Review Committee shall provide such information as determined by LTSE necessary to enable LTSE and the members of the Listing Review Committee, the staff of LTSE Regulation, or an Advisor to either thereof to determine whether he or she has a conflict of interest or bias, or circumstances otherwise existing where his or her fairness might reasonably be questioned.

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(a) Record on Review

At each proceeding under this Section, the written record may consist of the following items, as applicable: correspondence between the Exchange and the Company; the Company's public filings; information released to the public by the Company; written submissions, exhibits, or requests submitted by either the Company or LTSE Regulation and responses thereto; and any additional information considered by the Listings Review Committee as part of the review process. The written record will be supplemented by the transcript of any hearings held during the review process and all Decisions issued.

At each review under this Section, the Company will be informed of the contents of the written record. The Company will be provided a copy of any documents in the record that were not provided by the Company or are not publicly available, at least three calendar days before the deadline for Company submissions, unless the Company waives this production.

If additional issues arising under Chapter 14 are considered, as permitted by LTSE Rule 14.500, the notice of such consideration and any response to such notice shall be made a part of the record.

(b) Additional Information Requested or Considered

At each proceeding under this Section, the Listings Review Committee, as part of its review:

- (1) may request additional information from the Company or LTSE Regulation; and
- (2) may consider additional information available from other sources it deems relevant. The Company and LTSE Regulation will be afforded written notice and an opportunity to address the significance of any information requested or considered, and the notice, responses to the notice, and the information considered will be made part of the record.

(c) Contents of Decisions

Each Listings Review Committee written Decision will include:

- (1) a statement describing the procedural history of the proceeding, including investigations or reviews undertaken by LTSE Regulation;
- (2) the quantitative or qualitative standard that the Company is alleged to have failed to satisfy;

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- (3) a statement setting forth the findings of fact with respect to the Company;
- (4) the conclusions of the Listings Review Committee as to whether the Company has failed to satisfy the quantitative or qualitative standards for initial or continued listing; and
- (5) a statement of the Listings Review Committee in support of its disposition of the matter, and, if applicable, the rationale for any exception to the initial or continued listing requirements granted.

(d) Correction of Clerical Errors

The Listings Review Committee may correct clerical or other non-substantive errors in its Decisions either on their own motion or at the request of a Company. A copy of any such corrected Decision will be provided to the Company.

(e) Computation and Adjustment of Time

- (1) Except as described in paragraph (B) below, in counting any time under this Section, the day of the act, event, or default from which the period of time begins to run, is not to be included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday, or Exchange holiday in which case the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or Exchange holiday.
- (2) When Staff determines whether a deficiency has occurred with respect to the Price, Market Value of Listed Securities, or Market Value of Publicly Held Shares requirements, the first trading day that the Price or Market Value is below required standards is included in computing the total number of consecutive trading days of default. Similarly, when Staff determines whether a Company has regained compliance with the Price, Market Value of Listed Securities, or Market Value of Publicly Held Shares requirements, the first trading day that the Price or Market Value is at or above required standards is included in computing the total number of consecutive trading days.
- (3) If the Office of General Counsel determines that notice required to be provided under this Section was not properly given or that other extenuating circumstances exist, the Office of General Counsel may adjust the periods of time provided by the rules for the filing of written submissions, the scheduling of hearings, or the performance of other procedural actions by the Company or the Listings Review Committee, as applicable, to allow the Company or the Listings Review Committee the time contemplated by these rules.

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(4) A Company may waive any notice period specified in this Section.

(f) Delivery of Documents

Delivery of any document under this Section may be made by electronic delivery, hand delivery, facsimile, regular mail, or overnight courier. Delivery will be considered timely if the electronic delivery, hand delivery, fax, or overnight courier is received on or before the relevant deadline. If a Company has not specified a facsimile number, e-mail address, or street address, delivery will be made to the last known facsimile number, e-mail address, and street address. If a Company is represented by counsel or a representative, delivery may be made to the counsel or representative.

(g) Document Retention Procedures

Any document submitted to the Exchange in connection with a proceeding under this Section will be retained in accordance with applicable record retention policies.

(h) Documentation of Decisions

LTSE Regulation or the Advisor to the Listings Review Committee, as applicable, shall document the date on which a Decision with respect to a Company is implemented.

(i) Re-Listing of a Company

A Company that has been the subject of a Decision by the Listings Review Committee to delist such Company shall be required, prior to re-listing, to comply with the requirements for initial listing. A Company that has been suspended but that has not been the subject of such a Decision shall be required, prior to re-listing, to comply with requirements for continued listing.

(j) Voluntary Delisting

(1) A Company may voluntarily terminate its listing upon compliance with all requirements of Rule 12d2-2(c) under the Act. In part, Rule 12d2-2(c) requires that the Company may delist by filing an application on Form 25 with the Commission, provided that the Company: (i) complies with all applicable laws in effect in the state in which it is incorporated and with the applicable LTSE Rules; (ii) provides notice to the Exchange no fewer than 10 days before the Company files the Form 25 with the Commission, including a statement of the material facts relating to the reasons for delisting; and (iii) contemporaneous with providing notice to the Exchange, publishes notice of its intent to delist, along with its reasons therefore, via a press release and on its web site, if it has one. Any notice provided on the Company's web site pursuant to Rule 12d2-2(c) must



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remain available until the delisting has become effective. The Company must also provide a copy of the Form 25 to the Exchange simultaneously with its filing with the Commission. The Exchange will provide notice on its web site of the Company's intent to delist as required by Rule 12d2-2(c)(3).

- (2) A Company that seeks to voluntarily delist a class of securities pursuant to LTSE Rule 14.505(j)(1) that has received notice from the Exchange, pursuant to LTSE Rule 14.500 or otherwise, that it fails to comply with one or more requirements for continued listing, or that is aware that it is below such continued listing requirements notwithstanding that it has not received such notice from the Exchange, must disclose this fact (including the specific continued listing requirement that it is below) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Act; and (ii) its press release and web site notice required by Rule 12d2-2(c)(2)(iii) under the Act.

(k) Disclosure of Public Reprimand Letter

A Company that receives a Listings Review Committee Decision that serves as a Public Reprimand Letter must make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of the Decision, including the Rule(s) upon which the Decision was based. As described in LTSE Rule 14.207(b)(1) and Supplementary Material .01 to LTSE Rule 14.207, the Company must notify the LTSE Regulation about the announcement through the electronic disclosure submission system available on the Exchange's Web site, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during System Hours (as defined in LTSE Rule 1.160), the Company must notify LTSE Regulation at least ten minutes prior to the announcement. If the public announcement is made outside of System Hours (as defined in LTSE Rule 1.160), the Company must notify LTSE Regulation of the announcement at least ten minutes prior to the start of System Hours (as defined in LTSE Rule 1.160). The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the Decision.

(l) Disclosure by LTSE

In order to maintain the quality of and public confidence in its market and to protect investors and the public interest, LTSE may, at any level of a proceeding under this LTSE Rule 14.500, make a public announcement, including by press release, describing a notification, Public Reprimand Letter, Staff Delisting Determination, Adjudicatory Body Decision, or other event involving a Company's listing or trading on LTSE.

## **Rule 14.601. Initial Listing Fees and Annual Listing Fees**

*(Amended by SR-LTSE-2019-04 eff. December 5, 2019)*

### **Rule Series 14.600. Listed Company Fees**

#### **Rule 14.601. Initial Listing Fees and Annual Listing Fees**

(a) Primary Equity Securities

(1) Initial Listing Fee.

- i. Reporting Company Market Capitalization. If a company has been a public reporting company continuously listed on a national securities exchange for at least 12 months prior to listing on the Exchange, then its market capitalization for purposes of the Initial Listing Fee is the unweighted average of the company's market capitalization over the prior four quarters. (Because the deadline to file a Form 10-Q or Form 10-K occurs after the end of the quarter, it is possible that a company that has been a public reporting company would have made only three such filings at the time of its initial listing on the Exchange. In such a scenario, the market capitalization shall be derived from its three most recent filings.) The market capitalization for each quarter shall be determined by multiplying the basic weighted average shares outstanding as provided in a company's Form 10-Q or Form 10-K for the end of the quarter times the closing price of the security on the final trading day of such quarter as determined from the primary listing market.
- ii. If a public reporting company has not been continuously listed on a national securities exchange at least 12 months prior to listing on the Exchange, then the market capitalization for purposes of the Initial Listing Fee shall be the lesser of: (i) the number of shares of common stock outstanding after its initial public offering as provided in the final effective registration statement times the price per share at which the company's shares were sold to the underwriters pursuant to its initial public offering ("IPO Market Capitalization"), or (ii) the Reporting Company Market Capitalization method for each available quarter (i.e., one, two, or three) for which the company has filed a Form 10-Q or 10-K. (In the case of a direct offering for which there are no underwritten securities, the price of the company's securities as of the commencement of trading on the primary listing market (i.e., opening cross) shall be used in lieu of an initial public offering price.)

**Rule 14.601. Initial Listing Fees and Annual Listing Fees**

- iii. If a company conducts an underwritten initial public offering and commences trading on the Exchange, then the Initial Listing Fee shall be based solely on the IPO Market Capitalization method as described above.
  - iv. The Initial Listing Fee shall be in the amount specified in paragraph (3) and shall be prorated based on the number of remaining trading days after listing on the Exchange.
- (2) Annual Listing Fee.
- i. The Annual Listing Fee for the upcoming calendar year is calculated on December 1, and shall be based on the company's Form 10-Q and Form 10-K filings over the prior four fiscal quarters. Thus, the Annual Listing Fee is calculated from filings covering the fourth quarter of the prior calendar year and the first three quarters of the current calendar year.
  - ii. The Annual Listing Fee shall be in the amount specified in paragraph (3) and shall not be refunded if a company is delisted or elects to delist during the calendar year.
- (3) Fee Schedule.

<u>Market Capitalization</u>	<u>Amount of Fee</u>
Up to \$1 billion	\$150,000
More than \$1 billion and up to \$3 billion	\$200,000
More than \$3 billion and up to \$5 billion	\$250,000
More than \$5 billion and up to \$10 billion	\$300,000
More than \$10 billion and up to \$15 billion	\$350,000
More than \$15 billion and up to \$30 billion	\$400,000
More than \$30 billion and up to \$50 billion	\$450,000
More than \$50 billion	\$500,000

*(Amended by SR-LTSE-2020-03 eff. January 30, 2020)*

## **CHAPTER 15. DUES, FEES, ASSESSMENTS, AND OTHER CHARGES; EFFECTIVE DATE**

### **Rule 15.110. Authority to Prescribe Dues, Fees, Assessments, and Other Charges**

- (a) Generally. The Exchange may prescribe such reasonable dues, fees, assessments, or other charges as it may, in its discretion, deem appropriate. Such dues, fees, assessments, and charges may include membership dues, transaction fees, communication and technology fees, regulatory charges, listing fees, and other fees and charges as the Exchange may determine. All such dues, fees, and charges shall be equitably allocated among Members, issuers, and other persons using the Exchange's facilities.
- (b) Regulatory Transaction Fee. Under Section 31 of the Act, the Exchange must pay certain fees to the Commission. To help fund the Exchange's obligations to the Commission under Section 31, this Regulatory Transaction Fee is assessed to Members. To the extent there may be any excess monies collected under this LTSE Rule 15.110, the Exchange may retain those monies to help fund its general operating expenses. Each Member engaged in executing transactions on the Exchange shall pay, in such manner and at such times as the Exchange shall direct, a Regulatory Transaction Fee equal to (i) the rate determined by the Commission to be applicable to covered sales occurring on the Exchange in accordance with Section 31 of the Act multiplied by (ii) the Member's aggregate dollar amount of covered sales occurring on the Exchange during any computational period.
- (c) Trading Fees. The Exchange will provide Members with notice of all relevant dues, fees, assessments, and charges of the Exchange. Such notice may be made available to Members on the Exchange's website or by any other method deemed reasonable by the Exchange.
- (d) Connection Fees. To the extent the Exchange is charged a fee by a third party that results directly from a Member cross-connecting its trading hardware to the Exchange's System from another trading center's system that is located in the same data center as the Exchange, the Exchange will pass that fee on, in full, to the Member.

### **Rule 15.120. Collection of Exchange Fees and Other Claims and Billing Policy**

- (a) Each LTSE Member, and all applicants for registration as such, shall be required to provide a clearing account number for an account at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges, and/or other monetary sanctions or other

**Rule 15.200. Schedule of Fees**

monies due and owing to the Exchange or other charges pursuant to LTSE Rule 15.110, including the Exchange Fee Schedule thereto; Regulatory Transaction Fees pursuant to LTSE Rule 15.110(b); dues, assessments and other charges pursuant to LTSE Rule 2.200 to the extent the Exchange were to determine to charge such fees; and fines, sanctions, and other charges pursuant to Chapters 8 and 9 of the LTSE Rulebook, which are due and owing to LTSE. If an LTSE Member disputes an invoice, the Exchange will not include the disputed amount in the debit if the Member has provided written notification of the dispute to the LTSE Accounting Department at [accounting@ltse.com](mailto:accounting@ltse.com) by the later of the 25th of the month (or the following business day if the 25th is not a business day) or ten days after the date the electronic invoice was sent to the Member, and the amount in dispute is at least \$10,000 or greater.

- (b) All pricing disputes concerning fees, which are listed in paragraph (a), billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation. All pricing disputes must be submitted no later than sixty (60) days after receipt of a billing invoice.

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\* \* \* \* \* **Supplementary Material** \* \* \* \* \*

**.01 Fees Collected by FINRA.**

*The Exchange will not debit fees due to FINRA pursuant to LTSE Rule 15.110(a), which are collected and retained by FINRA.*

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**Rule 15.200. Schedule of Fees**

- (a) Annual Membership Fee \$10,000/year
- (1) The Annual Membership Fee shall be assessed on a calendar year basis, with the fee for each upcoming year due by December 31.
  - (2) If a firm is admitted as a Member during a calendar year, the Annual Membership Fee shall be prorated (starting with the next calendar month) based upon the date the firm becomes a Member.
  - (3) If a Member is pending a voluntary termination of rights as a Member pursuant to Rule 2.190 prior to the date any Annual Membership Fee is assessed (i.e., December 31) and the Member does not utilize the facilities of the Exchange while such voluntary termination of rights is pending, then the Member will not be obligated to pay the Annual Membership Fee for the upcoming calendar year.
  - (4) The Annual Membership Fee shall be waived for calendar year 2020 for any firm submitting a completed membership application before the Exchange commences trading operations.

**Rule 15.200. Schedule of Fees**

*(Added by SR-LTSE-2020-04 eff. February 10, 2020)*