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ARTICLE

# Will Texas Stock Exchange Provide Regulatory Haven?

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After raising $120 million from investors such as BlackRock and Citadel Securities, the Texas Stock Exchange intends to apply to register with the US Securities and Exchange Commission later this year as a national securities exchange. The TXSE will be headquartered in Dallas and plans to begin facilitating trades of corporate securities, exchange-traded funds and American depositary receipts in late 2025, and listing companies in 2026.

Backers of the TXSE aim to challenge the dominance of the New York Stock Exchange and the Nasdaq in corporate listings. While there are currently more than 20 other national securities exchanges operating in the US, none have been able to provide meaningful competition to the NYSE and Nasdaq. For example, the Long-Term Stock Exchange, which received SEC approval in 2019, has just two listings.

However, the TXSE looks to differentiate itself from the NYSE and the Nasdaq, as well as other upstart exchanges, with its support from some of the largest financial institutions and liquidity providers in the world, and by offering "more stability and predictability around listing standards and associated costs."

TXSE Group Inc., the parent company of the TXSE, cited Texas' economic strength as a competitive advantage for a new national stock exchange. The Lone Star State is tied with New York for the second-most Fortune 500 companies, with 55. California is in first place, with 57 companies.

The TXSE also seeks to attract companies based in the Southeast, which TXSE Group says is leading the nation in economic expansion and population growth. Texas' recent establishment of the Texas Business Court to rival the Delaware Court of Chancery also signals the state's focus on being perceived as business-friendly and on attracting more companies to the state.

While national securities exchanges do establish and enforce corporate governance rules for publicly listed companies, there are other market participants and regulators that drive many of the increased corporate governance standards and disclosure requirements that contribute to increased compliance costs for public companies.

For example, in the past two years, the SEC has finalized rules applicable to all listed companies regarding the adoption of clawback policies; disclosure regarding cybersecurity risk management, governance and incidents; executive pay versus performance disclosure; changes to Rule 10b5-1 and related disclosure requirements; and others that have been vacated by courts or stayed pending judicial review.

Proxy advisory firms, which provide voting recommendations to shareholders and publish related governance guidelines, have also been increasing their focus on governance issues, such as gender diversity and board oversight of environmental and social risks. For example, Institutional Shareholder Services will generally recommend that shareholders vote against or withhold from voting for the chair of the nominating committee at companies where the board has no apparent racially or ethnically diverse members.

Similarly, Glass Lewis & Co. takes the position that a board has an important role in overseeing environmental and social risks, and that responsibility in overseeing such risks should be formally codified in the appropriate committee charters and other governing documents. Glass Lewis will also evaluate whether these documents provide for a "meaningful level of oversight and accountability."

These are only a few examples of the rules and policies promulgated by bodies other than the NYSE and the Nasdaq in recent years that have increased compliance burdens for public companies.

Before the TXSE can facilitate its first trades in 2025, it must register as a securities exchange with the SEC under the Securities Exchange Act. To do so, the TXSE must first file a Form 1 with the SEC, after which the commission will publish a notice of the filing, and interested persons will be able to submit written data, views and arguments concerning the TXSE application.

Within 90 days of such notice, the SEC must either grant the registration of the TXSE or institute proceedings to determine whether registration should be denied. If such proceedings are instituted, the proceedings must be concluded within 180 days of the notice, or longer if the SEC finds good cause to extend the proceedings or if the TXSE consents.

If the SEC finds that the TXSE satisfies applicable requirements — including that it has satisfactory rules designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest, as well as the capacity to enforce those rules — the SEC will approve the TXSE's application.

If approved, broker-dealers will connect to the TXSE at least in part because of the order protection rule, under which trade orders cannot be executed at a lower price than what is available on any national securities exchange. Broker-dealers have interpreted this rule to require a connection to each national securities exchange to ensure trades are executed at the lowest-displayed quotes.

While the launch of the TXSE may represent, in part, a market reaction to the increasingly complex regulations and guidelines that public companies must navigate, those looking to list on a national securities exchange should evaluate the full regulatory landscape and consider that their choice of an exchange may not relieve them of some of the most burdensome public company requirements.

In that regard, other recent legal developments, such as the US Supreme Court's recent reversal of the landmark *Chevron* decision, which established federal court deference to regulatory agency legal interpretations when statutory language is ambiguous, will likely open new pathways for challenging previously adopted SEC rules and may significantly impact the commission's rulemaking agenda going forward.

Further, while proxy advisory firms and the SEC have pointed to investor demand for increasing corporate governance and disclosure requirements in areas such as environmental, social and governance, there are market signals, such as the reduced demand for ESG-focused investment funds, that investors are pulling back their focus on such areas.

As Texas seeks to capitalize on its increasingly business-friendly reputation, and legal and other market developments are signaling a possible reduction in regulation, the TXSE may be well positioned to attract public company listings.

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