

compensation committee eligibility to cover all independent directors, not just those serving on the compensation committee. While Nasdaq heavily weighed the commenter's concern that multiple definitions of independence add to the complexity of board membership, Nasdaq believed that the intent of the Dodd-Frank Act and Rule 10C-1 was to address the independence of compensation committee members, as well as their advisers, specifically. Nasdaq concluded therefore that it is inappropriate to expand the additional requirements proposed herein to cover all independent directors. Finally, this commenter recommended that Nasdaq clarify that, while the factors must be considered in their totality, a single factor can result in a loss of director independence. Nasdaq confirms that a director cannot be deemed independent if he or she fails any one of the bright-line prohibitions in Nasdaq Listing Rule 5605(a)(2).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2012-109 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-109. This

file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NASDAQ-2012-109 and should be submitted on or before November 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>84</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-25281 Filed 10-12-12; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68022; File No. SR-BATS-2012-039]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No.1, To Adopt Listing Standards Related to Certain Compensation Committee and Compensation Adviser Requirements

October 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on

September 25, 2012, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which filing was amended and replaced in its entirety by Amendment No. 1 thereto on October 9, 2012, and which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange's proposed rule change would amend BATS Rule 14.10, entitled "Corporate Governance Requirements," in accordance with the provisions of Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") requiring the listing rules of a national securities exchange to prohibit the listing of any equity security of an issuer that is not in compliance with certain compensation committee and compensation adviser requirements, as well as modifying the numbering of Rule 14.10 in order to accommodate the proposed amendments and additions.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room. The proposed rule text can be found in Exhibit 5.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

This Amendment No. 1 to SR-BATS-2012-039 (the "Filing") amends and replaces in its entirety the Filing as originally submitted on September 25, 2012. Amendment No. 1 further clarifies

<sup>84</sup> 17 CFR 200.30-3(a)(12).

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

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

certain aspects of proposed Rule 14.10 as originally filed.<sup>3</sup>

Section 952 of the Dodd-Frank Act added Section 10C to the Act,<sup>4</sup> which requires the listing rules of each national securities exchange to prohibit the listing of any equity security of an issuer that is not in compliance with the compensation committee and compensation adviser requirements of Rule 10C-1 under the Act (“Rule 10C-1”).<sup>4</sup> Specifically, Rule 10C-1 requires the Exchange to establish listing standards that require each member of a listed issuer’s compensation committee to be a member of the board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. Rule 10C-1 also requires the Exchange to establish standards for evaluating the independence of a compensation consultant, legal counsel, or other adviser (“Compensation Consultant”) and requires a Company to provide funding to a compensation committee to retain such Compensation Consultant. Accordingly, in order to carry out the requirements of Section 952 of the Dodd-Frank Act, the Exchange proposes to make several amendments to Rule 14.10.

The Exchange proposes to amend Rule 14.10(c)(4)(A) and (B) to require that, in addition to meeting the criteria listed under Rule 14.10(c)(1)(B), in evaluating the independence of a director acting in the capacity described in Rule 14.10(c)(4)(B), the board of directors of a Company<sup>5</sup> shall consider the following factors: (i) The source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and (ii) whether the director is affiliated with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the Company.

The Exchange believes that the adoption of proposed Rule 14.10(c)(4)(A), along with the existing bright line tests for director

independence under Rule 14.10(c)(1)(B), would bring the Exchange in compliance with Rule 10C-1(b)(1), because the Rules would require that each director that is acting in the capacity described in Rule 14.10(c)(4)(B) be independent based on an evaluation by the board that include the consideration of the proposed factors in Rule 14.10(c)(4)(A). In determining these independence requirements, the Exchange considered relevant factors, including, but not limited to: The source of compensation of a director, including any consulting, advisory or other compensatory fee paid by the Company to such director and whether the director of a Company is affiliated with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the Company. Rule 10C-1 permits the Exchange to consider other relevant factors in determining the independence requirements for compensation committee members.<sup>6</sup> After reviewing its current and proposed listing rules, the Exchange concluded that these rules are sufficient to ensure the independence of Independent Directors acting in the capacity described in Rule 14.10(c)(4)(B). The Exchange believes that its existing “bright line” independence standards as set forth in Rule 14.10(c)(1)(B) are sufficiently broad to encompass the types of relationships which would generally be material to a director’s independence for determining executive officer compensation. Therefore, the Exchange determined not to propose independence requirements in addition to those specific considerations required by proposed Rule 14.10(c)(4)(A). After considering the factors provided in Rule 10C-1(b)(1)(ii) and evaluating how the factors could impact the ability of a director to act independently in the determination [sic] executive compensation, the Exchange believes that it can best comply with Rule 10C-1 by adopting in its Rules the factors set forth in Rule 10C-1(b)(1)(ii). The Exchange believes that this approach will best provide the board of directors of a Company with the requisite guidance and discretion to evaluate the independence of each director as it relates to the determination of executive compensation.

The Exchange is also proposing to amend Rule 14.10(c)(4)(B) to add a title to and adjust the numbering of the Rule. The changes are being proposed in order to remain consistent with existing rule structure and to ensure that the rules are well-organized and easily understandable.

The Exchange is also proposing to delete existing Rule 14.10(c)(4)(C). As currently written, Rule 14.10(c)(4)(C) provides an exception to the independence standards under Rule 14.10(c)(4)(A) and (B) where the compensation committee is comprised of at least three members, permitting one director who is not independent and is not a current officer or employee or a family member of an officer or employee to be appointed to the compensation committee if the board determines that such individual’s membership is required by the best interest of the Company. However, no such exception exists under Rule 10C-1 and, after considering the factors relevant to compensation committee independence under Rule 10C-1, the Exchange believes that deletion of the exception under its rules would comply with Rule 10C-1.

Additionally, the Exchange is proposing to add Rule 14.10(c)(4)(C)(i) to permit the compensation committee of a Company, acting in its capacity as a committee of the Company’s board of directors and in its sole discretion, to retain or obtain the advice of a Compensation Consultant. The Company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a Compensation Consultant retained by the compensation committee. The Exchange believes that this proposed Rule 14.10(c)(4)(C)(i) would comply with Rule 10C-1 and, more specifically, Rule 10C-1(b)(2)(i) in that it would provide the compensation committee of the Company’s board of directors with the authority to retain or obtain the advice of a Compensation Consultant. Further, proposed Rule 14.10(c)(4)(C)(i) would require the Company to provide appropriate funding to the compensation committee for such Compensation Consultant, as required under Rule 10C-1(b)(3).

The Exchange is also proposing to amend Rule 14.10(c)(4)(C)(ii) to require Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B), regardless of whether the Independent Directors are acting as a committee of the Company’s board of directors, that are selecting a Compensation Consultant to perform an independence assessment of the Compensation Consultant, as described below, prior to selecting the Compensation Consultant. An independence assessment is not required for the receipt of advice from in-house legal counsel. An independence assessment would include the consideration of the

<sup>3</sup> The Commission notes that the filed Amendment No. 1 changed language in sections (ii), (iii), and (iv) of Rule 14.10(c)(4)(C) to clarify the responsibilities and obligations of Independent Directors responsible for determining executive compensation, as well as their rights and obligations regarding Compensation Consultants. In addition, the Commission notes that Amendment No. 1 made clarifying descriptive changes in the Purpose section of the filing regarding: Changes to the rule text; the factors for determining compensation committee independence; the elimination of existing exemptions for asset-backed issuers and cooperatives; the phase-in period for initial public offerings; and the exemption for Smaller Reporting Companies.

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

<sup>5</sup> As defined in BATS Rule 14.1(a)(3).

<sup>6</sup> See 17 CFR 240.10C-1(b)(1)(ii).

following factors: (i) The provision of other services to the Company by the person that employs the Compensation Consultant; (ii) the amount of fees received from the Company by the person that employs the Compensation Consultant, as a percentage of the total revenue of the person that employs the Compensation Consultant; (iii) the policies and procedures of the person that employs the Compensation Consultant that are designed to prevent conflicts of interest; (iv) any business or personal relationship of the Compensation Consultant with any of the Independent Directors acting in the capacity described in Rule 14.10(c)(4)(B); (v) any stock of the Company owned by the Compensation Consultant; and (vi) any business or personal relationship of the Compensation Consultant, legal counsel, other adviser, or the person employing the Compensation Consultant with an executive officer of the Company. As proposed, Rule 14.10(c)(4)(C)(ii) would not include any specific additional factors for consideration, as the Exchange believes that the list included in Rule 10C-1(b)(4) is very comprehensive.

The Exchange believes that proposed Rule 14.10(c)(4)(C)(ii) would comply with Rule 10C-1 and, more specifically, Rule 10C-1(b)(4) because the proposed rule would require the Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B) to perform an independence assessment of the Compensation Consultant based on the factors required by Rule 10C-1(b)(4)(i)-(vi) before engaging such Compensation Consultant. Further, because proposed Rule 14.10(c)(4)(C)(ii) would adopt the standards exactly as provided in Rule 10C-1(b)(4), the Exchange believes that it would be in compliance with Rule 10C-1.

In addition, the Exchange is proposing to amend Rule 14.10(c)(4)(C)(iii) and (iv), also regarding Compensation Consultants. Specifically, the Exchange is proposing that Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B): (i) shall be directly responsible for the appointment, compensation and oversight of the work of any retained Compensation Consultant; and (ii) shall not be required to implement or act consistently with the advice or recommendations of the retained Compensation Consultant, nor be restricted in their ability or obligation to exercise their own judgment in fulfilling their duties. The Exchange believes that proposed Rules 14.10(c)(4)(C)(iii) and

(iv) comply with Rule 10C-1 and, more specifically, Rule 10C-1(b)(ii) and (iii), [sic] in that the proposed rules mirror exactly the requirements of Rule 10C-1(b)(ii) and (iii) [sic] and, therefore, would bring the Exchange's listing rules in compliance with Rule 10C-1.

The Exchange is also proposing to add Rule 14.10(c)(4)(D), which provides a Company that fails to comply with the composition committee requirements under Rule 14.10(c)(4)(B) because a director ceases to be independent for reasons outside the director's reasonable control with a cure period during which the Company may allow that director to continue to act in the capacity described in Rule 14.10(c)(4)(B) 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 the Exchange immediately upon learning of the event or circumstances that caused the noncompliance. The Exchange believes that proposed Rule 14.10(c)(4)(D) would comply with Rule 10C-1(a)(3), which requires the Exchange to provide for appropriate procedures for a listed issuer to have a reasonable opportunity to cure any defects that would be the basis for a prohibition before the imposition of such prohibition. Rule 14.10(c)(4)(D) also describes a cure period that would be compliant with Rule 10C-1(a)(3), which the Exchange has proposed to adopt. For these reasons, the Exchange believes that proposed Rule 14.10(c)(4)(D) would comply with Rule 10C-1(a)(3).

The Exchange is also proposing to amend Rules 14.10(e)(1)(A) and (B) in order to eliminate exemptions to Rule 14.10(c)(4) for asset-backed issuers and other passive issuers (collectively, "Asset-backed Issuers") and cooperatives. The Exchange believes that these changes comply with Rule 10C-1 because Rule 10C-1 provides exemptions to independence requirements in certain circumstances as well as general exemptions in other circumstances, however, Rule 10C-1 does not provide any exemptions for Asset-backed Issuers or for cooperatives. Rule 10C-1 does provide the Exchange with some discretion to provide exemptions to the requirements of Rule 10C-1, however, the Exchange declines to propose exemptions for Asset-backed Issuers or cooperatives at this time. For these reasons, the Exchange believes that proposed Rules 14.10(e)(1)(A) and (B) comply with the requirements of Rule 10C-1. In conjunction with this change, the Exchange is also proposing to eliminate the existing exemptions

from the requirements of Rule 14.10(c)(4) for Asset-backed Issuers and cooperatives. The Exchange recognizes the importance of independence in the process of determining executive officer compensation. Additionally, under the proposed Rules, Companies will not be required in all cases to comply, initially and on a continued basis, with the independence requirements. For example, Companies listing in connection with their initial public offering will have a phase-in period before compliance with Rules 14.10(c)(4)(A) and (B) becomes necessary, and all Companies will be subject to a cure period should an event occur that causes noncompliance with the Rules. The Exchange does recognize that certain issuers, including Asset-backed Issuers and cooperatives, might have governance structures that make compliance with Rule 14.10(c)(4) difficult or impractical. However, due to the fact that the Exchange does not have any listed Asset-backed Issuers or cooperatives, the Exchange is proposing to remove the current exemption so that it can more fully review, as a whole, potential exemptions for Asset-backed Issuers and cooperatives. The Exchange will constantly evaluate the appropriateness of these exemptions as well as exemptions for all other categories of issuers and may propose to reinstitute these or other exemptions in the future.

The Exchange is also proposing to amend Rule 14.10(e)(1)(C) to require foreign private issuers to comply with the Compensation Consultants requirement of Rule 14.10(c)(4)(C). The Exchange is proposing the amendment in order to make clear that, while 10C-1(b)(iii)(4) [sic] exempts foreign private issuers from the independence requirements of 10C-1(b)(ii), [sic] which the proposed Rule 14.10(e)(1)(C) reflects, Rule 10C-1 does not exempt foreign private issuers from the Compensation Consultant requirements under Rule 10C-1(b)(4). As such, the Exchange is proposing to amend its Rules to continue to exempt foreign private issuers from the independence requirements of Rules 14.10(c)(4)(A) and (B), but to make clear that foreign private issuers are not exempt from the Compensation Consultant requirements of Rule 14.10(c)(4)(C). For these reasons, the Exchange believes that the proposed changes to Rule 14.10(e)(1)(C) comply with the requirements of Rule 10C-1.

The Exchange is also proposing to amend Rule 14.10(e)(1)(D)(ix) to require limited partnerships to comply with the Compensation Consultants requirement of Rule 14.10(c)(4)(C). The Exchange is proposing the amendment in order to

make its rules reflect that, while 10C–1(b)(iii)(1) [sic] exempts limited partnership from the independence requirements of 10C–1(b)(ii), [sic] which the proposed Rule 14.10(e)(1)(D) reflects, Rule 10C–1 does not exempt limited partnerships from the Compensation Consultant requirements under Rule 10C–1(b)(4). As such, the Exchange is proposing to amend its rules to continue to exempt limited partnerships from the independence requirements of Rules 14.10(c)(4)(A) and (B), but to make clear that limited partnerships are not exempt from the Compensation Consultant requirements of Rule 14.10(c)(4)(C). For these reasons, the Exchange believes that the proposed changes to Rule 14.10(e)(1)(D)(ix) comply with the requirements of Rule 10C–1.

The Exchange is also proposing to amend Rule 14.10(e)(1)(E) to make clear that not all managed investment companies are exempt from Rules 14.10(c)(4)(A) and (B), but rather, only open-end management investment companies registered under the Investment Company Act of 1940 are exempt from the requirements. The Exchange is making this proposal in order to make its rules reflect that, while Rule 10C–1(b)(iii)(3) [sic] exempts open-end management investment companies registered under the Investment Company Act of 1940 from the independence requirements of Rule 10C–1(b)(ii), [sic] this exemption does not apply to all management investment companies. In addition, Rule 10C–1 does not exempt open-end management investment companies from the Compensation Consultant requirements under Rule 10C–1(b)(4). As such, the Exchange is proposing to amend its rules to reflect that open-end management investment companies will not be exempt from the Compensation Consultant requirements under Rule 14.10(c)(4)(C). Because these changes have been made to make Rule 14.10(e)(1)(E) reflect the language of Rule 10C–1, the Exchange believes that the proposed changes comply with the requirements of Rule 10C–1.

The Exchange is also proposing to add Rule 14.10(e)(1)(F), which will provide that Companies in bankruptcy proceedings are exempt from the independence requirements of Rules 14.10(c)(4)(A) and (B). The Exchange is making this proposal in order to make its rules reflect that, while Rule 10C–1(b)(iii)(2) [sic] exempts Companies in bankruptcy proceedings from the independence requirements of 10C–1(b)(ii), Rule 10C–1 does not exempt Companies in bankruptcy proceedings from the Compensation Consultant

requirements under Rule 10C–1(b)(4). As such, the Exchange is proposing to amend its rules to exempt Companies in bankruptcy proceedings from the independence requirements of Rules 14.10(c)(4)(A) and (B), but to make clear that Companies in bankruptcy proceedings are not exempt from the Compensation Consultant requirements of Rule 14.10(c)(4)(C). Because these changes have been made to make Rule 14.10(e)(1)(F) reflect the requirements of Rule 10C–1, the Exchange believes that the proposed changes comply with the requirements of Rule 10C–1.

The Exchange is also proposing to add Rule 14.10(e)(1)(G), which will provide that smaller reporting companies, as defined in Rule 12b–2 under the Act (“Smaller Reporting Companies”), are exempt from all of the requirements of Rule 14.10(c)(4). The Exchange is making this proposal in order to make its rules reflect that Rule 10C–1(b)(5)(ii) exempts Smaller Reporting Companies from the entirety of Rule 10C–1(b), including the independence and Compensation Consultant requirements under Rule 10C–1. As such, the Exchange is proposing to amend its rules to exempt Smaller Reporting Companies from the independence requirements of Rules 14.10(c)(4)(A) and (B) as well as the Compensation Consultant requirements of Rule 14.10(c)(4)(C). Because these changes have been made to make Rule 14.10(e)(1)(G) reflect the requirements of Rule 10C–1, the Exchange believes that the proposed changes comply with the requirements of Rule 10C–1. In addition, this approach will minimize new costs imposed on Smaller Reporting Companies and allow them some flexibility not allowed for larger Companies.

The Exchange also proposes to amend Rule 14.10(e)(2)(A) to allow a Company listing in connection with its initial public offering to phase-in the independent committee requirements set forth in Rules 14.10(c)(4)(A) and (B) as follows: (1) One independent member at the time of listing; (2) a majority of independent members within 90 days of listing; and (3) all independent members within one year of listing. The Exchange believes that this amendment complies with Rule 10C–1 because it provides a Company with the opportunity to gradually meet the requirements of Rules 14.10(c)(4)(A) and (B) after becoming listed in connection with an initial public offering, rather than forcing a Company to meet independence requirements prior to its initial public offering. Since Companies listing in connection with an initial public offering may not have previously

had an independent compensation committee, the Exchange believes that allowing such Companies to phase in compliance with the independent compensation committee requirements will reasonably provide these Companies with a window identical to that of the Independent Director Oversight of Director Nominations under Rule 14.10(c)(5) and the independent audit committee requirement pursuant to Rule 10A–3(b)(1)(iv)(A) under the Act.<sup>7</sup> As noted above, proposed Rule 14.10(e)(2)(A) would require that the Company have at least one independent member at the time of listing, meaning that even though it is described as a “phase-in period,” the Company would never actually be without at least one independent member.

The Exchange also proposes to add Rule 14.10(e)(2)(D) in order to permit a Company listed on the Exchange prior to the effective date of this proposal, commencing on June 1, 2013, to phase-in compliance with the Independent Director Oversight of Executive Officer Compensation requirements set forth in Rules 14.10(c)(4)(A) and (B) on the same schedule as Companies listing in conjunction with their initial public offering.

The Exchange also proposes to make a clarifying amendment to Rule 14.10(c)(1)(B), which defines an Independent Director, in order to indicate that there are additional factors involved in the determination of independence for directors acting in the capacity described in Rule 14.10(c)(4)(B). Lastly, the Exchange proposes to modify the numbering of Rule 14.10 in order to accommodate the amendments and additions proposed above.

## 2. Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> The Exchange believes that proposed Rule 14.10 is consistent with Section 6(b)(5) of the Act,<sup>9</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange is adopting proposed Rule

<sup>7</sup> See 17 CFR 240.10A–3(b)(1)(iv)(A).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

14.10 to comply with the requirements of Section 952 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest.

The Exchange also believes that the proposal will contribute to investor protection and the public interest by requiring that only Independent Directors of an issuer oversee executive officer compensation matters, consider independence criteria before retaining compensation advisers, and have ultimate responsibility for the appointment, compensation, and oversight of these advisers. As discussed above, after considering the factors provided in Rule 10C-1(b)(1)(ii) and evaluating how the factors could impact the ability of a director to act independently in the determination of executive compensation, the Exchange believes that it can best comply with Rule 10C-1 by adopting in its Rules the factors set forth in Rule 10C-1(b)(1)(ii). The Exchange believes that this approach will best provide the board of directors of a Company with the requisite guidance and discretion to evaluate the independence of each director as it relates to the determination of executive compensation.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2012-039 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2012-039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2012-039, and should be submitted on or before November 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-25280 Filed 10-12-12; 8:45 am]

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68007; File No. SR-NYSEMKT-2012-48]

#### **Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Amending Sections 110, 801, 803 and 805 of the Exchange's Company Guide To Comply With the Requirements of Securities and Exchange Commission Rule 10C-1**

October 9, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on September 25, 2012, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which filing was amended and replaced in its entirety by Amendment No. 1 thereto on October 1, 2012, and which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to amend Sections 110, 801, 803 and 805 of the Exchange's Company Guide (the "Company Guide") to comply with the requirements of Securities and Exchange Commission ("Commission" or "SEC") Rule 10C-1.<sup>4</sup> The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>4</sup> 17 CFR 240.10C-1.