

to limit logical port fees to logical port fees at the primary data center is not a substantive change in that Exchange constituents currently receive without charge a corresponding port at the secondary data center for any port established at the primary data center.

The Exchange also believes that providing financial incentives to use Exchange technology that the Exchange believes is the most technologically efficient for the Exchange and its constituents is a fair and equitable approach to pricing. Accordingly, the Exchange believes that promotion of its Multicast PITCH data feed through the continued offering of free logical ports is fair and equitable. The Multicast PITCH data feed is available to all Members, and as such, all Members have the ability to receive applicable Multicast PITCH ports free of charge. Further, the Exchange believes that promoting the use of redundant connectivity is reasonable, fair and equitable and not unreasonably discriminatory as it is uniform in application amongst Members and non-members and should enable such participants to enhance their business continuity planning.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange will not assess new fees as part of the proposal. Instead, the proposal is focused on enhancing the clarity of the fee schedule and reducing barriers to Exchange Members and non-member constituents that may be seeking to establish redundant connections to the Exchange.

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

No written comments were solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **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-BYX-2013-014 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-BYX-2013-014. 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 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-BYX-2013-014 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-12161 Filed 5-21-13; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69590; File No. SR-NYSE-2013-32]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Proposing an Amendment to the Bylaws of Its Wholly-Owned Subsidiary, NYSE Regulation, Inc. ("NYSE Regulation"), To Eliminate a Requirement That Not Less Than Two Members of the Board of Directors of NYSE Regulation Must Qualify as "Fair Representation Candidates"**

May 16, 2013.

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 May 8, 2013, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 an amendment to the bylaws of its wholly-owned subsidiary NYSE Regulation, Inc. ("NYSE Regulation") to eliminate a requirement that not less than two members of the board of directors of NYSE Regulation must qualify as "fair representation candidates" (as that term is defined in those bylaws). A requirement that such directors constitute a minimum of 20% of the board would remain in place. 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>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f).

## 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 those 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

The Exchange is proposing to amend the Fourth Amended and Restated Bylaws of NYSE Regulation ("NYSE Regulation Bylaws") to eliminate the requirement that not less than two members of the NYSE Regulation board of directors must be "fair representation candidates" (as defined in the NYSE Regulation Bylaws).<sup>3</sup> However, the current requirement that such directors constitute a minimum of 20% of the board will continue to apply. If the number that is equal to 20% of the entire board of directors is not a whole number, such number will be rounded up to the next whole number, and a provision so stating would be added to the NYSE Regulation Bylaws.

As defined in the NYSE Regulation Bylaws, fair representation candidates are Board members who are determined by member organizations of the Exchange through a specified petition process ("Petition Candidates") or, in the absence of a sufficient number of Petition Candidates, candidates recommended by the Director Candidate Recommendation Committee (the "DCRC") of NYSE Regulation. In addition, fair representation candidates for the NYSE Regulation Board must qualify as "non-affiliated directors" (as such term is defined in the NYSE Regulation Bylaws), i.e., U.S. Persons who are not members of the board of directors of NYSE Euronext and qualify as independent under the director independence policy of NYSE

<sup>3</sup> Section 6(b)(3) of the Act requires, as a condition for registration of a national securities exchange, the Commission to determine that, "[t]he rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs . . . ." See 15 U.S.C. 78f(b)(3).

Regulation.<sup>4</sup> Finally, like all members of the NYSE Regulation Board except for the Chief Executive Officer, fair representation candidates must qualify as independent under the director independence policy of NYSE Regulation.<sup>5</sup>

The NYSE Regulation Bylaws also provide that the Board shall consist of not less than three persons and that the number of directors shall be fixed from time to time by the Exchange, as sole equity member of NYSE Regulation. The size of the NYSE Regulation Board is currently fixed at five members, of which four positions are currently filled and one is open.<sup>6</sup> The Exchange and NYSE Regulation believe that a Board consisting of five members is sufficiently large to effectively perform the Board's oversight responsibilities. In addition, with a Board size of five directors, the Exchange believes that retaining the requirement that at least two directors must be "fair representation candidates" is now unwarranted since such directors would constitute 40% of the Board rather than 20% as was the case when the number of directors was ten. The Exchange believes that the current process for selecting the 20% of directors who meet the fair representation requirement in Section 6(b)(3), is consistent with the Act.<sup>7</sup> The Exchange is not proposing to change the NYSE Regulation independence requirements.

The Exchange believes that elimination of the two-director minimum requirement for fair representation candidates is consistent with the governance structures of other national securities exchanges that have been approved by the Securities and

<sup>4</sup> See Securities Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR-NYSE-2012-17) (approving the creation of the director independence policy of NYSE Regulation).

<sup>5</sup> The Bylaws of NYSE Regulation require that a majority of its Board consist of non-affiliated directors. The remaining directors are comprised of the Chief Executive Officer of NYSE Regulation and members of the board of directors of NYSE Euronext that qualify as independent under the NYSE Euronext independence policy. The Bylaws do not require any affiliated directors other than the Chief Executive Officer of NYSE Regulation.

<sup>6</sup> The number of directors on the NYSE Regulation board was reduced from ten to five in early 2013 in connection with the Financial Industry Regulatory Authority's ("FINRA") completion of specified milestones in the regulatory services agreement by and among FINRA, NYSE Group, Inc., NYSE Regulation, NYSE Arca, Inc., and NYSE MKT LLC pursuant to which FINRA assumed responsibility for performing the market surveillance and enforcement functions previously conducted by NYSE Regulation.

<sup>7</sup> The Exchange represents that the DCRC of NYSE Regulation is aware of and is in agreement with the proposed plan of implementation. There is otherwise no change to the "fair representation" candidate selection and petition process.

Exchange Commission (the "Commission"). For example, Article III, Section 5(e) of the By-Laws of the NASDAQ Stock Market LLC ("NASDAQ") requires that the Regulatory Oversight Committee of the NASDAQ Board of Directors (the "NASDAQ ROC"), which has an oversight role comparable to that of the NYSE Regulation Board, must consist of three members, each of whom must be a Public Director (i.e., "a Director who has no material business relationship with a broker or dealer, [NASDAQ] or its affiliates, or FINRA") and "independent director" as defined by NASDAQ Marketplace Rule 4200. There is no requirement that the NASDAQ ROC have any members who would be the equivalent of a fair representation candidate on the NYSE Regulation Board.

More recently, the Commission has approved a similar change to that proposed herein to the Operating Agreement of the Exchange and to the Bylaws of the Exchange's wholly owned subsidiary, NYSE Market, Inc.<sup>8</sup> These changes were approved subsequent to the Commission's approval of a structure for the board of NYSE Alternext US LLC (what is now NYSE MKT LLC), an affiliate of the Exchange, that included a requirement that at least 20% of the board of that organization constitute fair representation directors, but without the requirement that there be no less than two such directors.<sup>9</sup>

Accordingly, approval of the change to the NYSE Regulation Bylaws proposed herein will leave NYSE Regulation with a governance structure that is completely consistent with similar structures that the Commission has approved for the Exchange, for other subsidiaries and affiliates of the Exchange and for other national securities exchanges.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Act, in general, and furthers the objectives of Section 6(b)(3) of the Act<sup>11</sup> in particular in that it will assure a fair representation of the members of the Exchange in the selection of NYSE Regulation directors and in the administration of the affairs of the Exchange and NYSE Regulation. More specifically, the NYSE believes

<sup>8</sup> Securities Exchange Act Release No. 59683 (April 1, 2009), 74 FR 15799-01 (April 7, 2009) (SR-NYSE-2009-12).

<sup>9</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707, at 57711-12 (October 3, 2008) (SR-Amex-2008-62).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(3).

that, by eliminating the current NYSE Regulation Bylaw requirement for a minimum of two fair representation candidates on the NYSE Regulation Board, it will be able to improve administrative efficiency and effectiveness by operating with a smaller number of directors while continuing to fulfill its statutory obligations regarding the fair representation of members of the Exchange. The Exchange believes that the proposed rule change will also further the objectives of Section 6(b)(5) of the Act<sup>12</sup> as it will contribute to perfecting the mechanism of a free and open market and a national market system, in a manner that is consistent with the protection of investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates solely to the implementation of a more efficient and effective governance structure for NYSE Regulation and will have no effect on the NYSE's business operations or competitive position.

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

No written comments were solicited or received with respect to 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 self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the 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-NYSE-2013-32 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-NYSE-2013-32. 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 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-NYSE-2013-32, and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill**,  
Deputy Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69583; File No. SR-Phlx-2013-53]

#### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program To Allow Cabinet Trading To Take Place Below \$1 per Option Contract

May 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 8, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, 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 Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program in Rule 1059, Accommodation Transactions, to allow cabinet trading to take place below \$1 per option contract under specified circumstances (the "pilot program").

The text of the proposed rule change is set forth below. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

#### NASDAQ OMX PHLX Rules

\* \* \* \* \*

#### Options Rules

\* \* \* \* \*

#### Rule 1059. Accommodation Transactions

(a)-(b) No change.

. . . *Commentary:* \_\_\_\_\_

.01 No change.

.02 Limit Orders Priced Below \$1: Limit orders with a price of at least \$0 but less than \$1 per option contract may trade under the terms and conditions in Rule 1059 above in each series of option contracts open for trading on the Exchange, except that:

(a)-(c) No change.

(d) Unless otherwise extended, the effectiveness of the Commentary .02

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</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.