

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>17</sup> of the Act to determine whether the proposed rule change should be approved or 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-2013-45 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-2013-45. 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 the 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-NYSE-2013-45 and should be submitted on or before August 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Elizabeth M. Murphy,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69970; File No. SR-NYSE-2013-47]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 312.07 of the Listed Company Manual To Remove the 50% Quorum Requirement and Add Certain Clarifying Language

July 11, 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 June 28, 2013, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("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 amend Section 312.07 of the Listed Company Manual (the "Manual") to remove the requirement that the total vote cast on any proposal requiring shareholder approval under NYSE rules must represent over 50% in interest of all securities entitled to vote on the proposal.

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>18</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.

#### 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 proposes to amend Section 312.07 of the Manual to remove the requirement that the total vote cast on any proposal requiring shareholder approval under NYSE rules must represent over 50% in interest of all securities entitled to vote on the proposal.<sup>3</sup>

Section 312.07 establishes voting requirements for any shareholder meeting proposal where shareholder approval of that proposal is a prerequisite to the listing of any additional or new securities.<sup>4</sup> The rule requires approval by a majority of votes cast on any such proposal, subject to a quorum requirement that the total vote cast on the proposal must represent over 50% in interest of all securities entitled to vote on the proposal.<sup>5</sup>

The Exchange notes that listed companies are subject to quorum requirements under the laws of their states of incorporation.<sup>6</sup> In addition, the

<sup>3</sup> The Commission notes that the Exchange has also proposed to amend Section 312.07 to add "or where any matter requires shareholder approval" to the rule text.

<sup>4</sup> Section 312.03 of the Manual requires shareholder approval of the sale or transfer by the listed company of shares of common stock or securities convertible into or exercisable for common stock where the size of the issuance exceeds thresholds established in the rule or would result in a change of control. Section 303A.08 requires shareholder approval of equity compensation plans and material amendments thereto.

<sup>5</sup> Section 306.00 of the Manual provides that listed companies may use written consents 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.

<sup>6</sup> For example, Delaware allows companies to establish their own quorum requirements in their certificates of incorporation or bylaws, provided

<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

by-laws or other governing documents of listed companies frequently include more stringent voting requirements than imposed by state law.<sup>7</sup> In light of the protection afforded to shareholders by those other applicable requirements, the Exchange believes that the quorum requirement of Section 312.07 is unnecessary. The Exchange also believes that requiring companies to comply with a separate NYSE quorum requirement with respect to a limited category of proposals is confusing to companies and their shareholders, as it requires companies to disclose and apply two separate quorum requirements with respect to those matters, while applying only the requirements of their certificate of incorporation or bylaws or state law for all other proposals being voted on at the meeting.<sup>8</sup> The Exchange also notes that neither of the other two primary equities listing markets in the United States—the NASDAQ Stock Exchange LLC (“NASDAQ”) and NYSE MKT LLC (“NYSE MKT”)—has a quorum

that the quorum must be at least one-third of the shares entitled to vote on the matter. In the absence of a quorum provision in the company’s certificate of incorporation or bylaws, Delaware requires a quorum of 50% of the shares entitled to vote on the matter. See Del. Code Sec. 216.

<sup>7</sup> Section 310.00 of the Manual provides that the quorum required for any meeting should be sufficiently high to insure a representative vote and that the Exchange will give careful consideration to provisions fixing any proportion less than a majority of the outstanding shares as the quorum for shareholders’ meetings. Section 310 provides that the Exchange will generally not object to reasonable lesser quorum requirements if the company solicits proxies for shareholder meetings. Typically, companies seeking to list on the Exchange require a majority of outstanding shares as the quorum for a shareholders’ meeting. On occasion, however, the Exchange has listed a company with a quorum requirement of less than a majority of outstanding shares consistent with applicable state law. The Exchange is not aware, however, that any company with a quorum requirement of less than one-third of outstanding shares (except for companies entitled to rely on the provisions set forth in Section 103.00 of the Manual) has previously been listed on the Exchange. Additionally, the Exchange will not list a company with a quorum requirement of less than one-third of outstanding shares (except for companies entitled to rely on the provisions set forth in Section 103.00 of the Manual) going forward.

<sup>8</sup> The Exchange notes that further confusion is generated by the different treatment of broker non-votes under Section 312.07 and state law. The broker non-vote at a shareholder meeting represents those shares held by brokers as registered holders on behalf of beneficial owners who do not provide voting instructions. Under some state law, broker non-votes are generally deemed to be present for quorum purposes. However, it has been the NYSE’s longstanding interpretation of Section 312.07 that broker non-votes should not be counted in determining whether a majority of the shares outstanding and entitled to vote have been voted. The NYSE’s treatment of broker non-votes for purposes of Section 312.07 has long been a source of confusion among listed companies and their service providers.

requirement comparable to that included in Section 312.07.<sup>9</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Exchange in general, and furthers the objectives of Section 6(b)(5)<sup>11</sup> of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the protection of investors and the public interest in that the laws of the various states have quorum requirements and many companies’ own by-laws establish more stringent requirements than imposed by state law.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the Exchange notes that the competition among exchanges for listings is robust and vigorous, and the proposed rule change is not intended, nor is it expected, to reduce or diminish such competition. By conforming the NYSE’s voting requirements to those of NASDAQ, the proposed rule change would potentially increase competition for listings of companies that are concerned about their ability to meet the existing NYSE quorum requirements.

### 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.

<sup>9</sup> The Commission notes that under Section 312.07, the minimum vote which will constitute shareholder approval is a majority of votes cast on a proposal, and that Section 310 contains general quorum requirements that will still apply to all shareholder meetings as discussed in footnotes 7 and 16.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange immediately to harmonize its quorum requirement for listed companies with analogous quorum requirements of other primary listing exchanges, such as NYSE MKT and NASDAQ. The Commission further notes that as a result of the rules of these other listing markets, listed companies can already list on a primary market while not having to comply with a 50% quorum requirement.<sup>16</sup> Accordingly, the

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> The Commission notes that, as discussed in footnote 7 above, Section 310.00 of the Manual provides that the quorum required for any meeting should be sufficiently high to insure a representative vote and that the Exchange will give careful consideration to provisions fixing any proportion less than a majority of the outstanding shares as the quorum for shareholders’ meetings. Also, the Exchange has represented in footnote 7 above, that the Exchange is not aware that any company with a quorum requirement of less than

Commission hereby grants the Exchange's request and designates the proposal operative upon filing.<sup>17</sup>

At any time within 60 days of the filing of such 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-NYSE-2013-47 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-2013-47. 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

one-third of outstanding shares (except for companies entitled to rely on the provisions set forth in Section 103.00 of the Manual) has previously been listed on the Exchange. In addition, the Exchange represented, in footnote 7, that it will not list a company with a quorum requirement of less than one-third of outstanding shares (except for companies entitled to rely on the provisions set forth in Section 103.00 of the Manual) going forward. The Commission notes that these quorum requirements, which apply to all shareholder meetings, including ones where the shareholder approval matters in Section 312 are presented, are at least as stringent as NASDAQ's (see NASDAQ Rule 5620(c)).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 publicly available. All submissions should refer to File Number SR-NYSE-2013-47 and should be submitted on or before August 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69977; File No. SR-OCC-2013-05]

### **Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Provide That OCC, Rather Than an Adjustment Panel of the Securities Committee, Will Determine Adjustments to the Terms of Options Contracts To Account for Certain Events, Such as Certain Dividend Distributions or Other Corporate Actions, That Affect the Underlying Security or Other Underlying Interest**

July 11, 2013.

#### I. Introduction

On May 15, 2013 The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2013-05 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> The proposed rule change was published for comment in the **Federal**

**Register** on June 3, 2013.<sup>3</sup> The Commission received no comment letters. This order approves the proposed rule change.

#### II. Description

Certain corporate actions—such as declaration of dividends or distributions, stock splits, rights offerings, reorganizations, or the merger or liquidation of an issuer—affecting an underlying security may require an adjustment to the terms of the overlying options. The principal purpose of this rule change is to authorize OCC, rather than adjustment panels of the Securities Committee,<sup>4</sup> to determine option contract adjustments and to determine the value of distributed property involved in such adjustments.

Article VI, Section 11 of OCC's By-Laws provide that all adjustments to option contracts are currently determined on a case-by-case basis by an adjustment panel of the Securities Committee composed of two representatives<sup>5</sup> of each exchange that trades an option on the underlying security and the OCC Chairman (or his representative). All actions are determined by majority vote, with OCC voting only to break a tie. Besides determining particular adjustments in individual cases, Article VI, Section 11 also authorizes the Securities Committee to adopt statements of policy or interpretations governing option adjustments in general. Additionally, the Securities Committee is authorized to determine the value of distributed property involved in stock option adjustments as stated in Article VI, Section 11A(f).

Discussions among OCC and the options exchanges concerning potential changes to Securities Committee governance in respect of adjustments

<sup>3</sup> Securities Exchange Act Release No. 34-69642 (May 28, 2013), 78 FR 33138 (June 3, 2013).

<sup>4</sup> The OCC Securities Committee is authorized under OCC By-Law Article VI Section 11(a) to determine contract adjustments in particular cases and to formulate adjustment policy or interpretations having general applicability. The Securities Committee is comprised of representatives of OCC's participant options exchanges and authorized representatives of OCC.

<sup>5</sup> The Commission has approved an amendment to OCC's By-Laws under which only one representative of each relevant exchange is required on an adjustment panel. Securities Exchange Act Release No. 34-67333 (July 2, 2012), 77 FR 40394 (July 9, 2012) (SR-OCC-2012-07). However, the amendment will not be implemented until an amendment to the Options Disclosure Document reflecting this change is made. Interpretation and Policy .01 to Article VI, Section 11 clarifies that until such time as the amendment to the Options Disclosure Document is made and only one representative is required, an adjustment panel must have two representatives of each exchange that trades an option on the underlying security.

<sup>18</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.