

Signed at Washington, DC on July 20, 2012.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2012-18174 Filed 7-24-12; 8:45 am]

**BILLING CODE 4510-26-P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act Meetings; OPIC Annual Public Hearing

**TIME AND DATE:** 2:00 p.m., Thursday, September 6, 2012.

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

**STATUS:** Hearing OPEN to the Public at 2:00 p.m.

**PURPOSE:** Annual Public Hearing to afford an opportunity for any person to present views regarding the activities of the Corporation.

#### Procedures

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5:00 p.m., Wednesday, August 29, 2012. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5:00 p.m., Wednesday, August 29, 2012. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

#### CONTACT PERSON FOR INFORMATION:

Information on the hearing may be obtained from Connie M. Downs at (202) 336-8438, via email at

*connie.downs@opic.gov*, or via facsimile at (202) 408-0297.

**SUPPLEMENTARY INFORMATION:** OPIC is a U.S. Government agency that provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for environmentally sound projects that confer positive developmental benefits upon the project country while creating employment in the U.S. OPIC is required by section 231A(c) of the Foreign Assistance Act of 1961, as amended (the "Act") to hold at least one public hearing each year.

Dated: July 23, 2012.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 2012-18261 Filed 7-23-12; 4:15 pm]

**BILLING CODE 3210-01-P**

## RAILROAD RETIREMENT BOARD

### Sunshine Act Meetings

Notice is hereby given that the Railroad Retirement Board will hold a meeting on August 8, 2012, 10:00 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

#### Portion Open to the Public

- (1) Executive Committee Reports.
- (2) Proposal to Coordinate Additional Fact-Finding with Social Security Administration.

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312-751-4920.

Dated: July 20, 2012.

**Martha P. Rico,**

*Secretary to the Board.*

[FR Doc. 2012-18262 Filed 7-23-12; 4:15 pm]

**BILLING CODE 7905-01-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-67468; File No. SR-NASDAQ-2012-062]**

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Modify Its Corporate Governance Rules

July 19, 2012.

#### I. Introduction

On May 17, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities

and Exchange Commission ("Commission"), 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> a proposed rule change to modify an exception to Nasdaq Rule 5605 that allows a non-independent director of a listed company to serve on its audit committee, compensation committee or nominations committee under exceptional and limited circumstances.<sup>3</sup> The proposal was published for comment in the **Federal Register** on June 5, 2012.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Nasdaq's listing rules generally require that a listed company's audit, compensation and nominations committees consist of "independent directors,"<sup>5</sup> as defined in Nasdaq Rule 5605(a)(2). A director is specifically prohibited from being considered independent under certain circumstances.<sup>6</sup> For example, a director who is currently, or during the prior three years was, employed by the company, or a director who is a family member of an individual who is, or at any time during the prior three years was, employed as an executive officer<sup>7</sup> by the company, may not be considered independent.<sup>8</sup>

Nasdaq's listing rules also include an exception ("Exception") to permit a listed company, under exceptional and limited circumstances, with proper disclosure, and under specified conditions to allow one non-independent director to serve on the audit, compensation, or nominations committee for up to two years.<sup>9</sup> Currently, a listed company may not utilize the Exception for a non-

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

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

<sup>3</sup> See *infra* note 9 and accompanying text.

<sup>4</sup> See Securities Exchange Act Release No. 67076 (May 30, 2012), 77 FR 33261 (SR-NASDAQ-2012-062) ("Notice").

<sup>5</sup> See paragraphs (c)(2)(A), (d), and (e)(1)(B) of Nasdaq Rule 5605.

<sup>6</sup> See Nasdaq Rule 5605(a)(2).

<sup>7</sup> "Executive Officer" means those officers covered in Rule 16a-1(f) under the Act, 17 CFR 240.16a-1(f). See Nasdaq Rule 5605(a)(1).

<sup>8</sup> A director is not, however, barred from being independent if he or she has a family member employed by the company, provided that the family member is not an executive officer of the company. See Nasdaq Rule 5605(a)(2)(C).

<sup>9</sup> See paragraphs (c)(2)(B), (d)(3) and (e)(3) of Nasdaq Listing Rule 5605. The Exception, however, does not permit a listed company to appoint to its audit committee a director who does not meet the independence criteria set forth in Section 10A(m)(3) of the Exchange Act, 15 U.S.C. 78j-1(m)(3), and Rule 10A-3 thereunder, 17 CFR. 240.10A-3(b)(1). See also Nasdaq Rule 5605(c)(2)(B)(ii).

independent director who would otherwise qualify if that director has a family member who is an employee of the listed company, even if that family member is not an executive officer of the company. Nasdaq notes, however, that the same family relationship would not otherwise preclude a director from being considered independent.<sup>10</sup> Nasdaq cites to the example of a director who, until one year ago, was employed by a listed company and who has a son who is a non-executive employee of the company. The director, under ordinary circumstances, cannot be considered independent until three years after the end of the director's employment.<sup>11</sup> Nasdaq notes that it is the director's own prior employment relationship that precludes the director from being considered independent. The son's employment does not preclude the director from being considered independent. Thus, three years after the end of the director's employment, the company's board of directors ("board") may determine that the director is independent, even if the director's son is still a non-executive employee of the company at that time. Nonetheless, under the current rule, if the listed company sought to appoint this same director to its audit, compensation, or nominations committee pursuant to the Exception prior to the expiration of the three-year lookback period, it would be unable to do so solely because of the son's employment.

Nasdaq believes that this distinction in its listing rules is incongruous. If employment of a director's family member, other than as an executive officer, does not disqualify a director from being considered independent, the Exchange states that it sees no reason to preclude a listed company from relying on the Exception for that same director where the listed company's board determines that the director's membership on the relevant committee is required by the best interests of the company and its shareholders.<sup>12</sup>

Nasdaq proposes to amend paragraphs (c)(2)(B), (d)(3), and (e)(3) of Nasdaq Rule 5605 to allow a director who is a family member of a non-executive employee of a listed company to serve on the listed company's audit committee, compensation committee, or nominations committee under exceptional and limited circumstances as long as the listed company's board

concludes that the director's membership on the relevant committee is required by the best interests of the company and its shareholders. Under the proposed rule change, the board would still be required, as under the current version of the Exception, to make an affirmative determination that the non-independent director's membership on a committee is required by the best interests of the company and its shareholders. Nasdaq states that it expects the board, in making such a determination, to consider any family relationship between the non-independent director and a non-executive employee of the company.<sup>13</sup>

Under the proposed rule change, a listed company, other than a foreign private issuer, that relies on the Exception for an audit committee member would continue to be required to comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S-K.<sup>14</sup> A foreign private issuer that relies on the Exception for an audit committee member would continue to be required to disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the committee member not independent and the reasons for the board's determination to rely on the Exception.<sup>15</sup>

Similarly, a listed company that relies on the Exception for a compensation or nominations committee member would continue to be required to disclose either on or through the company's Web site or in the proxy statement for the next annual meeting of the company (or, if the company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship that makes the committee member not independent and the reasons for the determination to rely on the Exception.<sup>16</sup> A listed company that relies on the Exception for a compensation or nominations committee member also would continue to be required to provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on the Exception.<sup>17</sup>

<sup>13</sup> Under both the current and proposed versions of the Exception, a listed company could not rely on the Exception for a director who has a family member who is an executive officer of the listed company. In addition, under both the current and proposed versions of the Exception for audit committees, a listed company could not rely on the Exception for a director who does not meet the criteria in Section 10A(m)(3) of the Act and the rules thereunder to allow the director to serve on the audit committee. See 15 U.S.C. 78j-1(m)(3) and 17 CFR 240.10A-3(b)(1).

<sup>14</sup> See Nasdaq Rule 5605(c)(2)(B).

<sup>15</sup> *Id.*

<sup>16</sup> See paragraphs (d)(3) and (e)(3) of Nasdaq Rule 5605.

<sup>17</sup> *Id.*

Finally, the proposed rule change would replace the term "officer" with the defined term "Executive Officer" in paragraphs (c)(2)(B), (d)(3), and (e)(3) of Nasdaq Rule 5605. Nasdaq notes that it has always interpreted these terms in the same manner.<sup>18</sup>

### III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>19</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>20</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>21</sup>

As the Exchange notes, in ordinary circumstances, when a family member of a director is employed by the listed company, but not as an executive officer, the director may still be deemed independent. The Exchange believes that it is incongruous for the same relationship to preclude a company from relying on the Exception where the requirements of the Exception otherwise

<sup>18</sup> See Notice, *supra* note 4.

<sup>19</sup> In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> The Commission notes that it recently adopted new Rule 10C-1 under the Act, relating to the independence of compensation committees of listed issuers. See Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 28422 (June 27, 2012). In accordance with Section 10C of the Act, which was added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, new Rule 10C-1 directs each national securities exchange to establish listing standards that, among other things, require each member of a listed issuer's compensation committee to be a member of the board of directors and to be "independent," as defined in the listing standards of the exchange adopted in accordance with Rule 10C-1. The exchanges must file with the Commission, no later than September 25, 2012, proposed rule changes that comply with the requirements of Rule 10C-1, and must have final rules or rule amendments that comply with Rule 10C-1 approved by the Commission no later than June 27, 2013. The Commission expects that, in submitting a proposed rule change in compliance with Rule 10C-1, Nasdaq will discuss whether and how its proposed rule change would relate to the Exception and the Exchange's instant proposed rule change with respect to compensation committees.

<sup>10</sup> See paragraphs (a), (c)(2)(B), (d)(3) and (e)(3) of Nasdaq Rule 5605.

<sup>11</sup> See Nasdaq Rule 5605(a)(2)(A), which provides that a director who is, or at any time during the past three years was, employed by a listed company may not be considered independent.

<sup>12</sup> See Notice, *supra* note 4.

are satisfied. The Commission believes that the Exchange's view is not unreasonable. In approving the proposed rule change, the Commission notes that in any instance in which a listed company relies on the Exception, the company's board would continue to be required under the proposal to affirmatively determine that the director does not have any relationship which, in the opinion of the board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.<sup>22</sup>

The Commission further notes that a listed company is permitted to use the Exception only if its 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. Moreover, the Commission notes that any time an issuer relies on the Exception, it is required to make the public disclosures indicated above.

Finally, the Commission believes that replacing the undefined term "officer" with the defined term "Executive Officer," in keeping with the Exchange's longstanding interpretation of its listing rules, clarifies the applicability of the listing rules.

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-NASDAQ-2012-062), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-18106 Filed 7-24-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67471; File No. SR-FINRA-2012-26]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to the Handling of Stop and Stop Limit Orders

July 19, 2012.

On May 24, 2012, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend FINRA's rules relating to the handling of stop and stop limit orders. The proposed rule change was published for comment in the **Federal Register** on June 6, 2012.<sup>3</sup> The Commission received four comment letters regarding the proposal.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is July 21, 2012. The Commission is extending the 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on this proposed rule change. In particular, extension of time will ensure the Commission has sufficient time to consider the Exchange's proposal in

light of, among other things, the comments received on the proposal. The extension of time also will allow the Commission sufficient time to consider any responses to the comments.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> designates September 4, 2012, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, this proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-18108 Filed 7-24-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67470; File No. SR-NYSEArca-2012-28]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the JPM XF Physical Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

July 19, 2012.

#### I. Introduction

On April 2, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares ("Shares") of JPM XF Physical Copper Trust ("Trust") pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on April 20, 2012.<sup>3</sup> The Commission initially received one comment letter on the proposed rule change.<sup>4</sup> On May 30, 2012, the

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

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

<sup>3</sup> See Securities Exchange Act Release No. 67085 (May 31, 2012), 77 FR 33537.

<sup>4</sup> See Letters to Elizabeth M. Murphy, Secretary, Commission, from Ann L. Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated June 26, 2012; Gary J. Sjustedt, Director, Order Routing and Sales, TD Ameritrade, Inc., dated June 27, 2012; Virgil F. Liptak, dated July 3, 2012; and Christopher Nagy, President, KOR Trading LLC, dated July 9, 2012. The comment letters received by the Commission are available at <http://www.sec.gov/comments/sr-finra-2012-026/finra2012026.shtml>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(31).

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

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

<sup>3</sup> Securities Exchange Act Release No. 66816 (April 16, 2012), 77 FR 23772 ("Notice").

<sup>4</sup> See letter from Vandenberg & Feliu, LLP ("V&F"), received May 9, 2012 ("V&F Letter"). The V&F Letter is available at <http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228.shtml>. In a second comment letter, V&F identified itself as a U.S. law firm that represents RK Capital LLC, an international copper merchant, and four end-users of copper: Southwire Company, Encore Wire Corporation, Luvata, and

<sup>22</sup> See Nasdaq Rule 5605(a)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).