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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69590; File No. SR-NYSE-2013-32)

May 16, 2013

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”

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 website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<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 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

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<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).

(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 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

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<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, 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.

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 Exchange Commission (the “Commission”). For example, Article III, Section 5(e) of the By-Laws of the 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

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<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.

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

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 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

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<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).

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.

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

#### 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 e-mail 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 e-mail 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 website (<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 website 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 [insert date 21 days from publication in the Federal Register].

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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<sup>13</sup> 17 CFR 200.30-3(a)(12).