

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74824; File No. SR-NYSEARCA-2015-29)

April 28, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend NYSE Arca Rules 3.1 and 3.3 and Section 4.01(a) of the Exchange's Bylaws to Establish a Regulatory Oversight Committee as a Committee of the Board of Directors of the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 17, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("SEC" or "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 Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rules 3.1 and 3.3 and Section 4.01(a) of the Exchange's Bylaws to establish a Regulatory Oversight Committee ("ROC") as a committee of the board of directors of the Exchange (the "Board"). The text of the proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a ROC as a committee of the Board with the responsibility to independently monitor the Exchange's regulatory operations.³ To effectuate this change, the Exchange proposes to amend NYSE Arca Rules 3.1 and 3.3 and Section 4.01(a) of the Bylaws of the Exchange.

Rule 3.1(a) provides the Board with authority to establish one or more committees consisting of one or more directors of the Exchange (each, a "Board Committee"). Rule 3.3 specifies existing Board Committees. The Exchange proposes to amend Rule 3.3 to provide for a ROC and delineate its composition and functions. The proposed new rule text would be substantially similar to Article III, Section 5(c) of the By-Laws of the NASDAQ Stock Market

³ NYSE Regulation, Inc. ("NYSE Regulation"), a not-for-profit subsidiary of the Exchange's affiliate New York Stock Exchange LLC ("NYSE"), performs all of the Exchange's regulatory functions pursuant to an intercompany Regulatory Services Agreement ("RSA") that gives the Exchange the contractual right to review NYSE Regulation's performance. NYSE Regulation performs regulatory functions for the Exchange's affiliate NYSE MKT LLC ("NYSE MKT") pursuant to a similar intercompany RSA. NYSE MKT has submitted a similar proposal to establish a ROC with primary responsibility for overseeing regulatory operations. See SR-NYSEMKT-2015-27.

LLC (“Committees Composed Solely of Directors”)⁴ and Article V, Section 6(c) of the Third Amended and Restated Bylaws of BATS Exchange, Inc. (“BATS”) (“BATS Bylaws”).⁵

In particular, proposed Rule 3.3(a)(2)(A) would provide that the Board shall appoint a ROC on an annual basis. Proposed Rule 3.3(a)(2)(B) would describe the composition of the ROC. The Exchange proposes that the ROC would consist of at least three members, each of whom would be a public director of the Exchange or a director of NYSE Regulation who satisfies the public director requirements set forth in Section 3.02(a) of the Bylaws of the Exchange.⁶ The Exchange believes that the requirement for ROC members to be public directors ensures the independence of these members. The Exchange further believes that a ROC comprised of at least three members is appropriate. The size and composition of the proposed ROC would be largely the same as that of the ROCs of other self-regulatory

⁴ See Securities Exchange Act Release No. 34-53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (“Release No. 34-53128”) (order granting application of NASDAQ Stock Market LLC (“NASDAQ”) for registration as a national securities exchange). As noted below, members of the NASDAQ ROC must satisfy both NASDAQ’s public director and independent director requirements.

⁵ See Securities Exchange Act Release No. 34-58375 (August 18, 2008), 73 FR 49498, 49502 (August 21, 2008) (File No. 10-182) (“Release No. 34-58375”) (approving BATS’ application seeking registration as a national securities exchange).

⁶ Article III, Section 3.02(a) of the Exchange’s Bylaws requires that at least 50% of the Exchange’s directors be public directors, defined as “persons from the public and [who] will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates.” The Exchange believes that the Bylaw requirements for “public directors” establish the Exchange’s criteria for director independence, and therefore serve the same purpose as the NYSE and NYSE MKT Independence Policies. See Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR-NYSE- 2012-17; SR-NYSEArca-2012-59; SR-NYSEMKT-2012-07) (approving NYSE’s and NYSE MKT’s director independence policy). See also Release No. 34-53128, 71 FR at 3553 (the Commission has recognized that “public directors can provide unique, unbiased perspectives” that can “enhance” a board’s ability “to address issues in a non-discriminatory fashion and foster the integrity” of the Exchange).

organizations (“SROs”),⁷ with the exception of the possibility to include directors of NYSE Regulation who meet the public director requirements.⁸ A ROC with at least three members satisfying the exchange’s independence requirements has been recognized as one of several measures that can help ensure the independence of the regulatory function from the market operations and commercial interests of a national securities exchange.⁹

Further, proposed Rule 3.3(a)(2)(B) would provide that the Board may, on affirmative vote of a majority of directors, at any time remove any member of the ROC for cause. Proposed Rule 3.3(a)(2)(B) would also provide that a failure of the member to qualify as a public director shall constitute a basis to remove a member of the ROC for cause. Similar authority is found in the bylaws governing the ROCs of other SROs.¹⁰ Finally, proposed Rule 3.3(a)(2)(B) would provide that, if the term of office of a ROC committee member terminates under this section, and

⁷ See e.g., NASDAQ By-laws, Article III, Section 5(c) (“NASDAQ Bylaws”) (specifying a ROC comprising three directors who must satisfy both NASDAQ’s public director and independent director requirements); Third Amended and Restated Bylaws of BATS Exchange, Inc. (“BATS”), Article V, Section 6(c) (“BATS Bylaws”) (specifying a ROC comprising three non-industry (i.e., public) directors); and Chicago Board Options Exchange, Incorporated (“CBOE”) Bylaws, Article IV, Section 4.5 (specifying a ROC of at least three directors all of whom shall be “non-industry” directors).

⁸ The Exchange proposes to amend Rule 3.1(a) to permit the appointment of NYSE Regulation directors to the ROC by amending the rule to provide that board committees “may” consist “partly or entirely” of Exchange directors instead of the current requirement that committees consist of “one or more” Exchange directors.

⁹ See, e.g., Release No. 34-53128, 71 FR at 3555 (NASDAQ); Release No. 34-58375, 73 FR at 49502 (BATS); Securities Exchange Act Release No. 34-61152 (December 10, 2009), 74 FR 66699, 66704-705 (December 16, 2009) (File No. 10-191) (approving application of C2 Options Exchange, Incorporated, seeking registration as a national securities exchange); and Securities Exchange Act Release No. 34-61698 (March 10 [sic], 2010), 75 FR 13151, 13161 (March 12 [sic], 2010) (“Release No. 34-61698”) (approving application of EDGX Exchange, Inc. and EDGA Exchange, Inc., seeking registration as a national securities exchange).

¹⁰ See e.g., BATS Bylaws, Article V, Section 2(a) (“the Chairman may, at any time, with or without cause, remove any member of a committee so appointed, with the approval of the Board.”); Second Amended and Restated By-laws of National Stock Exchange, Inc., Article V, Section 5.2 (same).

the remaining term of office of such committee member at the time of termination is not more than three months, during the period of vacancy the ROC would not be deemed to be in violation of its compositional requirements by virtue of the vacancy. Once again, this is consistent with the rules and bylaws of other SROs.¹¹

Proposed Rule 3.3(a)(2)(C) would describe the functions and authority of the proposed ROC. The proposed ROC's responsibilities would be to:

- oversee the Exchange's regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities;
- assess the Exchange's regulatory performance; and
- advise and make recommendations to the Board or other committees of the Board about the Exchange's regulatory compliance, effectiveness and plans.¹²

In furtherance of these functions, the proposed rule would provide the ROC with the authority and obligation to review the regulatory budget of the Exchange and specifically inquire into the adequacy of resources available in the budget for regulatory activities. Moreover, under the proposed rule, the ROC would be charged with meeting regularly with the Chief Regulatory Officer ("CRO") in executive session and, in consultation with the Exchange's Chief Executive Officer, establishing the goals, assessing the performance, and recommending the CRO's

¹¹ See e.g., NASDAQ Bylaws, Article III, Section 2(b).

¹² These three core responsibilities of the proposed ROC would be substantially similar to those of other SROs' ROCs. See, e.g., NASDAQ Bylaws, Article III, Section 5; Release No. 34-58375, 73 FR at 49502 (BATS); Release No. 34-61698, 75 FR at 13161 (EDGX Exchange, Inc. and EDGA Exchange, Inc.); and Amended and Restated By-Laws of Miami International Securities Exchange, LLC, Article IV, Section 4.5(c).

compensation. Finally, under the proposed rule, the ROC would be responsible for keeping the Board informed with respect to the foregoing matters.¹³

Finally, the Exchange proposes to amend Article IV, Section 4.01 of its Bylaws governing board committees. Specifically, the Exchange proposes to add references to the proposed ROC to subsection (a) of Section 4.01. Further, the Exchange proposes to add “Except as otherwise provided in the Rules” to the clause in Section 4.01(a) that requires each board committee to be comprised of at least 50% public directors because, under the proposed changes to Rules 3.1 and 3.3, the ROC may include directors of NYSE Regulation. Lastly, the Exchange proposes to add text to Section 4.01(a) providing that vacancies in the membership of any committee would be filled by the Exchange Board, which is consistent with proposed Rule 3.3 and the same as other SROs.¹⁴

As stated above, the Exchange proposes that members of the ROC could be either public directors of the Exchange Board or directors of NYSE Regulation who satisfy the public director requirements, thereby ensuring that the ROC would be comprised of independent members.¹⁵ The proposed eligibility of qualifying directors of the NYSE Regulation board for the ROC would allow individuals to be members of the ROC who have direct experience in overseeing the adequacy and effectiveness of the Exchange’s and its affiliates’ regulatory programs.

The Exchange believes that the proposed rule change creating an independent board committee to oversee the adequacy and effectiveness of the performance of its self-regulatory

¹³ The obligations of the proposed ROC would be substantially similar to those of other SROs’ ROCs. See, e.g., NASDAQ Bylaws, Article III, Section 5; Bylaws of NASDAQ OMX PHLX LLC, Article V, Section 5-2; Third Amended and Restated Bylaws of BATS-Exchange, Inc., Article V, Section 6(c).

¹⁴ See Second Amended Limited Liability Company Agreement of the NASDAQ Stock Market LLC, Section 9(g).

¹⁵ See note 7 and accompanying text supra.

responsibilities is consistent with previously approved rule changes for other self-regulatory organizations and would enable the Exchange to harmonize its corporate governance with that of its industry peers.¹⁶ Moreover, the Exchange believes that the proposed adoption of a ROC would ensure the continued independence of the regulatory process.¹⁷ The fundamental hallmarks of regulatory independence – determinations regarding the Exchange’s regulatory plan, programs, budget and staffing made by individuals independent of Exchange management and a CRO having general supervision of the regulatory operations of the Exchange and reporting to a ROC – are integral to the proposal.¹⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act¹⁹ in general, and with Section 6(b)(1)²⁰ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons

¹⁶ See NASDAQ Bylaws, Article III, Section 5(c); BATS Bylaws, Article V, Section 6(c).

¹⁷ See, e.g., Securities Exchange Act Release No. 34-48946 (December 17, 2003), 68 FR 74678, 74687 (August 21, 2008 [sic]) (SR-NYSE-2003-34).

¹⁸ See, e.g., Release No. 34-53128, 71 FR at 3555. Prior to 2010, the Exchange’s rules and Bylaws provided for a ROC composed entirely of public directors that was responsible for ensuring (i) the independence of Exchange regulation; (ii) adequate resources for the Exchange to properly fulfill its self-regulatory obligations; and (iii) that Exchange management fully supported the execution of the regulatory process. See Securities Exchange Act Release No. 34-62304 (June 16, 2010), 75 FR 36136, 36138 (May 6, 2010) (SR-NYSEArca-2010-31). In 2010, in order to align corporate practices with its affiliates NYSE and NYSE MKT, the Exchange transferred oversight of the Exchange’s regulatory activities to the board of directors of NYSE Regulation and eliminated the ROC. See *id.*

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(1).

associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed change would create an independent board committee to oversee the adequacy and effectiveness of the performance of the Exchange's self-regulatory responsibilities. The proposed ROC, similar in composition and functions to the approved ROCs of other SROs, would be designed to oversee the Exchange's regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; assess the Exchange's regulatory performance; and advise and make recommendations to the Board or other committees of the Board about the Exchange's regulatory compliance, effectiveness and plans.

As noted, the Exchange proposes that members of the ROC could be either public directors of the Exchange Board or directors of NYSE Regulation who satisfy the public director requirements, thereby ensuring that the ROC would be comprised of independent members. The Exchange believes that proposing to allow directors of NYSE Regulation who satisfy the public director requirements to be eligible for the ROC would provide the choice to include these individuals who have direct experience in overseeing the adequacy and effectiveness of the Exchange's and its affiliates' regulatory programs. Accordingly, the Exchange believes that the proposed amendment would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance by its members and persons associated with its members with the provisions of the Exchange Act. The Exchange therefore believes that approval of the proposed amendment to the Bylaws is consistent with Section 6(b)(1).

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of

the Exchange Act²¹ because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and facilitating 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.

As discussed above, the Exchange believes that the proposed creation of a ROC composed of public directors of the Exchange Board or directors of NYSE Regulation who satisfy the public director requirements would align the Exchange's corporate governance practices with other SROs that have adopted a ROC to monitor the adequacy and effectiveness of the regulatory program, assess regulatory performance, and assist the Board in reviewing the regulatory plan and the overall effectiveness of the regulatory function. Moreover, the Exchange believes that the proposed ROC structure would also sufficiently "insulate" the regulatory functions from the Exchange's "market and other commercial interests" in order for the Exchange to carry out its regulatory obligations.²² The Exchange believes that the proposed rule change is therefore consistent with and facilitates a governance and regulatory structure that furthers the objectives of Section 6(b)(5) of the Exchange Act. The independent oversight of the Exchange's regulatory functions by the proposed ROC is also designed to protect investors as well as the public interest.

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

The Exchange does not believe that the proposed rule change would impose any burden

²¹ 15 U.S.C. 78f(b)(5).

²² Release No. 34-53128, 71 FR at 3556.

on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange's Board.

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 up to 90 days (i) as the Commission may designate 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2015-29 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEARCA-2015-29. 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-NYSEARCA-2015-29, 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.²³

Brent J. Fields
Secretary

²³ 17 CFR 200.30-3(a)(12).