

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.

BSECC believes that changing the name of the Nominating Committee to the Nominating and Governance Committee and amending references to an exchange name to reflect a corporate change to a limited liability company are both clarifying in nature. The changes will ensure that the committee's title accurately reflects its functions and will ensure that the By-Laws accurately and properly reflect an exchange entity name. As discussed above, the amendment that broker nonvotes will not be counted as a vote either "for" or "against" in director elections will codify NASDAQ OMX's past practice, providing clarity and transparency. Accordingly BSECC believes that the amendments are consistent with investor protection and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

BSECC does not believe that the proposed rule change will have any impact or impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments relating to the proposed rule change have not been solicited or received. BSECC will notify the Commission of any written comments received by BSECC.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder 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 for 30 days after the date of the filing, or such shorter time as the

Commission may designate. 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSECC-2011-002 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-BSECC-2011-002. 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 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 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of BSECC and on BSECC's Web site at <http://>

[nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/pdf/bsecc-filings/2011/SR-BSECC-2011-002.pdf](http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/pdf/bsecc-filings/2011/SR-BSECC-2011-002.pdf).

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-BSECC-2011-002 and should be submitted on or before May 25, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Cathy H. Ahn,**  
*Deputy Secretary.*

[FR Doc. 2011-10855 Filed 5-3-11; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64363; File No. SR-FINRA-2011-011]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the By-Laws of FINRA Regulation, Inc. With Regard to District Committees**

April 28, 2011.

**I. Introduction**

On February 25, 2011, the 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 the By-Laws of FINRA's regulatory subsidiary ("FINRA Regulation") with regard to District Committee structure and governance to, among other things, adjust the size and composition of District Committees to align more closely with the industry representation on the FINRA Board and replace District Nominating Committees with a process of direct nomination and election based on firm size. The proposed rule change was published for comment in the **Federal Register** on March 7, 2011.<sup>3</sup> The Commission received one comment letter on the proposed rule change.<sup>4</sup>

<sup>15</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.

<sup>3</sup> See Securities Exchange Act Release No. 64002 (March 2, 2011), 76 FR 12390 ("Notice").

<sup>4</sup> See letter from Ed Horwitz, District and Committee Member, Horwitz and Associates, Inc.,

Continued

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. NASDAQ OMX PHLX LLC has satisfied this requirement.

FINRA responded to the Horwitz Letter on April 15, 2011.<sup>5</sup> This order approves the proposed rule change.

## II. Background—District Committees, District Nominating Committees, Districts and Regions

Pursuant to the By-Laws, the FINRA Regulation Board of Directors determines the boundaries of the districts and the size of the District Committees. The FINRA Regulation Board has established eleven districts, overseen by FINRA District Offices, which are administratively grouped within five regions (the West, the Midwest, the South, the North and New York).

Currently, FINRA District Committee members contribute to the regulatory process by, among other things, serving as panelists in disciplinary proceedings in accordance with FINRA Rules; considering and recommending policies and rule changes; and endeavoring to educate FINRA members and others as to the objects, purposes and work of FINRA and FINRA Regulation. The District Committees meet on average twice each year, jointly with the other District Committees in their respective regions. District Committees are composed of nine members, with the exception of the New York District Committee which has twelve. Due to staggered three-year District Committee membership terms, one-third of each District Committee's positions are available for election each year. In some cases, a District Committee may have additional positions to fill if a member has died, resigned, or been removed creating a vacancy on the Committee.

The District Nominating Committees are composed of five members each, a majority of whom have served on a District Committee, are current or former FINRA Regulation Directors, or current or former FINRA Governors. As part of the election process, the By-Laws require the Corporate Secretary to provide each District Nominating Committee and District Director notice, on or before June 1 of each year, identifying the members of the District Committees and District Nominating Committees whose terms are expiring within the next calendar year. After the vacancies are announced, any interested party may propose a candidate profile which will be used by the District Nominating Committees for review, a process that usually involves candidate

interviews and that will conclude with the nomination of a slate of candidates for election. The By-Laws also provide a process whereby a registered person meeting the vacancy requirements may be considered for nomination as an additional ("petition") candidate in a contested election. In recent years, FINRA has witnessed a decline in the number of eligible individuals willing to serve on the District or District Nominating committees or to undergo the nomination process. FINRA believes this decline is due to a number of perceived problems which FINRA seeks to address by streamlining the nomination and election process as described below.

## III. Description of the Proposed Rule Change

FINRA proposed to modify the FINRA Regulation By-Laws ("By-Laws") with regard to District Committees in several respects. FINRA proposed to:

- Adjust the size and composition of District Committees over a three-year transition period to align more closely with the industry representation on the FINRA Board;
- Replace District Nominating Committees with a process of direct nomination and election based on firm size;
- Codify the current practice of District Committees meeting on a regional basis;
- Eliminate the Advisory Council;
- Amend the qualification requirements and prescribe further term limits for District Committee members;
- Revise procedures for qualification and accounting of ballots to be administered solely by an Independent Agent; and
- Make other procedural and administrative changes.

## IV. Discussion of Comment Letter

As noted above, the Commission received one comment letter on the proposed rule change and FINRA responded to the comment.<sup>6</sup> The commenter opposed the proposal for two reasons. First, the commenter states that the proposed rule change would give large firms disproportionate representation on the District Committees. The commenter notes that Large Firms make up 8.52 percent of FINRA's membership and employ 88.04 percent of the total registered representatives, while Small Firms make up 91.48 percent of FINRA's membership and employ 11.95 percent

of the total registered representatives.<sup>7</sup> Though the commenter acknowledges that large firms employ a significant majority of registered representatives, he notes that representatives do not count as members.

FINRA responded to the issues raised in the Horwitz Letter. FINRA believes that the proposed composition of the District Committees which is based on the size of firms will ensure fairness and balance between those firms that make up the largest percentage of membership and those firms that employ the largest percentage of the registered representative population. FINRA noted that three-sevenths of the District Committee members would be associated with Small Firms, one-seventh with Mid-Sized Firms and three-sevenths with Large Firms, as these terms are defined in FINRA's rules. FINRA believes that having representation on the District Committees of firms of different sizes should result in inclusion of firms having different business models, and more fully represent the interests of FINRA's diverse membership in committee discussions. FINRA further states that the proposed compositional structure of the District Committees is similar to the compositional structures of industry representatives on the FINRA Board of Governors and the National Adjudicatory Council ("NAC").

Second, the commenter questions the proposal to eliminate the District Nominating Committees and replace them with a process of self-nomination by individuals who meet the qualification requirements. The commenter believes that this proposed change will make the voting process a popularity contest rather than a selection by peers based on proven track records and industry background.

FINRA stated that it has witnessed a decline in the number of eligible individuals willing to serve on the District or District Nominating committees or to undergo the nomination process. In response, FINRA proposed to replace District Nominating Committees with a process of direct candidate nomination and election by the membership because FINRA believes the proposal will create a more accessible, transparent, and effective election process. Moreover, FINRA notes that the District Nominating Committees are made up of a majority of former District Committee members, or current or former Directors of the FINRA Regulation Board and Governors

to Commission, dated March 25, 2011 ("Horwitz Letter").

<sup>5</sup> See letter from John Komoroske, Vice President, Member Regulation, FINRA, to Elizabeth M. Murphy, Secretary, Commission dated April 15, 2011 ("FINRA Response").

<sup>6</sup> See *supra* notes 4 and 5.

<sup>7</sup> The commenter has combined the categories of Mid-Sized Firm and Large Firm. See Response letter at 2.

of the FINRA Board. FINRA stated that it intends to seek informal input from retiring District Committee members regarding potential future members, thus continuing to draw upon the expertise of this group, without the need and expense of the current District Nominating Committees.

#### V. Commission Findings

The Commission has carefully reviewed the proposed rule change, the comment letter, and FINRA's response to the comment, and believes that FINRA has appropriately responded to the commenter's concerns. 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 association, and, in particular, with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>9</sup>

The proposed rule change is designed to streamline the nomination and election process for District Committees, adjust the size and composition of District Committees, amend the qualification requirements, prescribe further term limits for District Committee members, and make other administrative and technical changes to the process, and should result in additional candidates willing to serve on a District Committee. The proposal aligns the representation of members on the District Committees to be generally consistent with the industry representation on the FINRA Board of Governors and the industry representation on the NAC. As FINRA stated in its Response Letter, three-sevenths of the District Committee members will represent Small Firms, one-seventh will represent Mid-Sized Firms and three-sevenths will represent Large Firms. FINRA's goal is to more closely align the membership of the District Committees with its membership while streamlining the process for finding and electing candidates to serve on the District Committee.

FINRA will prohibit a District Committee member from serving consecutive three-year terms to bring different perspectives and views to

District Committees. Individuals interested in serving more than one term may do so on a non-consecutive basis. FINRA is eliminating the Advisory Council and will seek views on policy issues and recommendations directly from its membership. With these changes, the Commission believes that FINRA will be able to realize the goals of the District Committee system without the time and resource expenditures now required of Advisory Council members and FINRA staff. Further, centralizing the election process within the Corporate Secretary's office should streamline the process making it more efficient. The Corporate Secretary's office will be able to apply its administrative experience from other FINRA elections to the process for District Committee elections.<sup>10</sup>

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-FINRA-2011-011) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-10857 Filed 5-3-11; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64369; File No. SR-FINRA-2011-021]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of Implementation Date for Expansion of the Order Audit Trail System to All NMS Stocks

April 29, 2011.

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 April 26, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. FINRA has

designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to establish October 3, 2011, as the implementation date of the amendments to FINRA Rules 7410 and 7470 that the Commission approved on November 12, 2010.<sup>4</sup>

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

FINRA is filing the proposed rule change to establish October 3, 2011, as the implementation date for the amendments to the OATS rules expanding the OATS recording and reporting requirements to all NMS stocks.

On November 12, 2010, the SEC approved SR-FINRA-2010-044, which amended FINRA Rules 7410 and 7470 to expand the OATS recording and reporting requirements to include all NMS stocks.<sup>5</sup> On January 11, 2011, FINRA published *Regulatory Notice 11-03* announcing that the Commission approved the amendments and that FINRA was publishing a new version of the *OATS Reporting Technical Specifications*. Pursuant to the SEC's approval of SR-FINRA-2010-044 and

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Securities Exchange Act Rel. No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR-FINRA-2010-044).

<sup>5</sup> See Securities Exchange Act Rel. No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR-FINRA-2010-044).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> FINRA will implement the proposal on the first day of the month following Commission approval.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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.