

Down Plan will be operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot for at least through the phased implementation of the Plan is operational will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 11890 is necessary once the Plan is operational and, if so, whether improvements can be made. Further, the Exchange believes it consistent with the protection of investors and the public interest to adopt objective criteria to nullify transactions that occur outside of the Plan's price bands when such transactions should not have been executed but were due to a systems or technology issue.

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

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistent rules across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

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 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 Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.¹³

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.

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. Please include File Number SR-NASDAQ-2013-022 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-NASDAQ-2013-022. 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 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-NASDAQ-2013-022, and should be submitted on or before March 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68822; File No. SR-ISE-2013-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC To Amend ISE Rule 2128 Relating to Clearly Erroneous Trades

February 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 1, 2013, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. 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 Rule 2128 (Clearly Erroneous Trades) to extend the expiration of the pilot rule. The Exchange also proposes to adopt

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

new paragraph (i) to Rule 2128 in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or "Plan").³

The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

The Exchange proposes to amend ISE Rule 2128 (Clearly Erroneous Trades) to extend the expiration of the pilot rule to September 30, 2013 and to adopt new paragraph (i) to Rule 2128 in connection with upcoming operation of the Limit Up-Limit Down Plan. Amendments to ISE Rule 2128 to provide for uniform treatment of certain clearly erroneous execution reviews in multi-stock events involving twenty or more securities and in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before a trading pause is in effect on the Exchange were approved by the Commission on September 10, 2010 on a pilot basis to end on April 11, 2011.⁴ The Exchange then extended this pilot to expire upon the earlier of August 11, 2011 or the date on which the limit up/limit down mechanism to address

extraordinary market volatility applies.⁵ The Exchange then extended the pilot to January 31, 2012⁶ and, once again, extended the pilot to July 31, 2012.⁷ On July 27, 2012, ISE Rule 2102 [sic] was amended to extend the pilot to February 4, 2013.⁸ The Exchange now proposes to extend the date by which this pilot rule will expire to September 30, 2013, which is the date that the Exchange anticipates that the phased implementation of the Limit Up-Limit Down Plan will be complete.

As explained in further detail below, although the Limit Up-Limit Down Plan is intended to prevent executions that would need to be nullified as clearly erroneous, the Exchange believes that certain protections should be maintained while the industry gains initial experience operating with the Limit Up-Limit Down Plan, including the provisions of Rule 11.17 that currently operate as a pilot.

Proposed Limit Up-Limit Down Provision to Rule 11.17

The Exchange proposes to adopt new paragraph (i) to Rule 2128, to provide that the existing provisions of Rule 2128 will continue to apply to all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in proposed paragraph (i). Accordingly, other than as proposed below, the Exchange proposes to maintain and continue to apply the Clearly Erroneous trade standards in the same way that it does today. Notably, this means that the Exchange might nullify transactions that occur within the price bands disseminated pursuant to the Limit Up-Limit Down Plan to the extent such transactions qualify as clearly erroneous under existing criteria. As an example, assume that a Tier 1 security pursuant to the Plan has a reference price pursuant to both the Plan and Rule 2128 of \$100.00. The lower pricing band under the Plan would be \$95.00 and the upper pricing band under the Plan would be \$105.00. An execution could occur on the Exchange in this security at \$96.00, as this is within the Plan's pricing bands. However, if subjected to review as potentially clearly erroneous, the Exchange would nullify an execution at

\$96.00 as clearly erroneous because it exceeds the 3% threshold that is in place pursuant to Rule 2128(c)(1) for securities priced above \$50.00 (*i.e.*, with a reference price of \$100.00, any transactions at or below \$97.00 or above \$103.00 could be nullified as clearly erroneous). Accordingly, this proposal maintains the status quo with respect to reviews of Clearly Erroneous Executions and the application of objective numerical guidelines by the Exchange. The proposal does not increase the discretion afforded to the Exchange in connection with reviews of Clearly Erroneous Executions.

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan.⁹ The possibility remains that the Exchange could experience a technology or systems problem with respect to the implementation of the price bands disseminated pursuant to the Plan. To address such possibilities, the Exchange proposes to adopt language to make clear that if an Exchange technology or systems issue results in any transaction occurring outside of the price bands disseminated pursuant to the Plan, an Officer of the Exchange or senior level employee designee, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Officer of the Exchange or other senior level employee designee shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of the Exchange or other senior level employee designee must be taken by no later than the start of Regular Market Session¹⁰ on the trading day following the date on which the execution(s) under review occurred. Although the Exchange will act as promptly as possible and the proposed objective standard (*i.e.*, whether an execution occurred outside the band) should make it feasible to quickly make a determination, there may be circumstances in which additional time may be needed for verification of facts or coordination with outside parties, including the single plan processor responsible for disseminating the price bands and other market centers. Accordingly, the Exchange believes it

³ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release").

⁴ See Securities Exchange Act Release Nos. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-ISE-2010-62) (Extending the pilot period to December 10, 2010); 63481 (December 9, 2010), 75 FR 78275 (December 15, 2010) (Extending the pilot period to April 11, 2011).

⁵ See Securities and Exchange Act Release No. 64231 (April 7, 2011), 76 FR 20733 (April 13, 2011) (SR-ISE-2011-19).

⁶ See Securities and Exchange Act Release No. 65061 (August 9, 2011), 76 FR 50503 (August 15, 2011) (SR-ISE-2011-51).

⁷ See Securities and Exchange Act Release No. 66255 (January 26, 2012), 77 FR 5081 (February 1, 2012) (SR-ISE-2012-04).

⁸ See Securities Exchange Act Release No. 67528 (July 27, 2012), 77 FR 46532 (August 3, 2012) (SR-ISE-2012-67).

⁹ See Limit Up-Limit Down Release, *supra* note 3.

¹⁰ Regular Market Session commence [sic] at 9:30 a.m. Eastern Time. See ISE Rules 2102 and 2106.

necessary to maintain some flexibility to make a determination outside of the thirty (30) minute guideline. In addition, the Exchange proposes that a transaction that is nullified pursuant to new paragraph (i) would be appealable in accordance with the provisions of Rule 2128(e)(2). In addition, the Exchange proposes to make clear that in the event that a single plan processor experiences a technology or systems problem that prevents the dissemination of price bands, the Exchange would make the determination of whether to nullify transactions based on Rule 2128(a)–(h).

The Exchange believes that cancelling trades that occur outside of the price bands disseminated pursuant to the Plan is consistent with the purpose and intent of the Plan, as such transactions are not intended to occur in the first place. If transactions do occur outside of the price bands and no exception applies—which necessarily would be caused by a technology or systems issue—then the Exchange believes the appropriate result is to nullify such transactions.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,¹¹ which requires the rules of an exchange to promote just and equitable principles of trade, 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. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will be operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot for at least through the phased implementation of the Plan is operational will help to protect against unanticipated

consequences. To that end, the extension will allow the Exchange to determine whether Rule 2128 is necessary once the Plan is operational and, if so, whether improvements can be made. Further, the Exchange believes it consistent with the protection of investors and the public interest to adopt objective criteria to nullify transactions that occur outside of the Plan's price bands when such transactions should not have been executed but were due to a systems or technology issue.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

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 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 Act¹² and Rule 19b-4(f)(6)(iii) thereunder.¹³

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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.¹⁴

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.

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. Please include File Number SR-ISE-2013-12 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-ISE-2013-12. 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 on official business days between the hours of 10:00 a.m.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

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-ISE-2013-12, and should be submitted on or before March 1, 2013.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-02845 Filed 2-7-13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68823; File Nos. SR-BSECC-2012-002; SR-BX-2012-075; SR-NASDAQ-2012-142; SR-Phlx-2012-142; SR-SCCP-2012-02]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; NASDAQ OMX BX, Inc.; the NASDAQ Stock Market LLC; NASDAQ OMX PHLX LLC; Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Changes With Respect to the Amendment of the By-Laws of The NASDAQ OMX Group, Inc.

February 4, 2013.

I. Introduction

On December 19, 2012, Boston Stock Exchange Clearing Corporation (“BSECC”), NASDAQ OMX BX, Inc. (“BX”), the NASDAQ Stock Market LLC (“NASDAQ”), NASDAQ OMX PHLX LLC (“Phlx”), and the Stock Clearing Corporation of Philadelphia (“SCCP”) and, together with BSECC, BX, NASDAQ and Phlx, the “SROs” or “Self-Regulatory Subsidiaries”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ proposed rule changes with respect to the amendment of the by-laws (“NASDAQ OMX By-Laws”) of the NASDAQ OMX Group, Inc. (“NASDAQ OMX”), the parent company of the SROs. The proposed rule changes were published for comment in the *Federal Register* on

December 31, 2012 with respect to the BX, NASDAQ and Phlx proposals and on January 2, 2013 with respect to the SCCP and BSECC proposals.⁴ The Commission received no comment letters on the proposals.

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange in the case of the proposals by BX, NASDAQ and Phlx and to a clearing agency in the case of the proposals by BSECC and SCCP.⁵ In particular, the Commission finds that the proposed rule changes by BX, NASDAQ and Phlx are consistent with Section 6(b)(1) of the Act,⁶ which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder and the rules of the exchange. In addition, the Commission finds that the proposed rule changes by BX, NASDAQ and Phlx are consistent with Section 6(b)(5) of the Act,⁷ which, among other things, requires that the rules of the exchange be 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. The Commission also finds that the proposed rule changes by BSECC and SCCP are consistent with Section 17A of the Act,⁸ which, among other things, requires that the rules of a clearing agency are designed to facilitate the prompt and accurate clearance and

⁴ See Securities Exchange Act Release Nos. 68512 (December 21, 2012), 77 FR 77168 (December 31, 2012) (SR-NASDAQ-2012-142) (“NASDAQ Notice”); 68513 (December 21, 2012), 77 FR 77129 (December 31, 2012) (SR-Phlx-2012-142); 68514 (December 21, 2012), 77 FR 77137 (December 31, 2012) (SR-BX-2012-075); 68536 (December 26, 2012), 78 FR 128 (January 2, 2013) (SR-SCCP-2012-02); 68537 (December 26, 2012), 78 FR 132 (January 2, 2013) (SR-BSECC-2012-002).

⁵ In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(1).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds in its custody or control or for which it is responsible, and to protect investors and the public interest.

II. Discussion and Commission Findings

Definitions of Directors

The SROs are proposing amendments to provisions of the NASDAQ OMX By-Laws pertaining to the compositional requirements of the Board of Directors of NASDAQ OMX (“NASDAQ OMX Board”). The SROs propose to amend the definition of “Industry Director.” Under the proposed definition, an Industry Director and “Industry committee member”⁹ will be defined as a Director who: (1) Is, or within the last year was, or has an immediately family member¹⁰ who is, or within the last year was, a member of a Self-Regulatory Subsidiary;¹¹ (2) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary;¹² (3) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization¹³ of a Self-Regulatory Subsidiary; (4) has within the last year received from any member or member organization of a Self-Regulatory

⁹ The term “committee member” in the NASDAQ OMX By-Laws refers to membership in the committees authorized under Section 4.13 of the By-Laws, such as the Executive Committee and the Audit Committee. Under the NASDAQ OMX By-Laws and the Delaware General Corporation Law, all members of committees with the power and authority to act on behalf of the NASDAQ OMX Board in the management of the business and affairs of NASDAQ OMX must themselves be Directors. Accordingly, the definitions of “Industry Director” and “Industry committee member” are coterminous as applied to any member of these committees. The NASDAQ OMX By-Laws do not presently contemplate any committees with non-Director members.

¹⁰ A definition of “immediate family member” will be added to the NASDAQ OMX By-Laws as follows: “‘Immediate family member’ means a person’s spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person’s home.” The definition is identical to the definition of “family member” contained in NASDAQ listing standards, as provided in NASDAQ Rule 5605.

¹¹ This provision will apply to an individual that is or was a member of Phlx, the only Self-Regulatory Subsidiary that allows natural persons to become members.

¹² A broker-dealer that is admitted to membership in Phlx is referred to as a “member organization;” broker-dealers admitted to membership in the other Self-Regulatory Subsidiaries are referred to as “members.”

¹³ An “Executive Officer” of a member or member organization means those officers covered in Rule 16a-1(f) under the Act, as if the member or member organization were an issuer within the meaning of such Rule. 17 CFR 240.16a-1(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.