

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-00295 Filed 1-12-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 74010; File No. SR-NYSE-2014-62]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending the Bylaws of New York Stock Exchange LLC's Wholly-Owned Subsidiary, NYSE Regulation, Inc., To Provide That Non-Affiliated Directors of NYSE Regulation, Inc. Would Not Be Removed for Cause If They Are Acting in Good Faith in Exercising Their Responsibilities as Directors Related to NYSE Regulation's Functions and Responsibilities Delegated to It Under the Delegation Agreement Between New York Stock Exchange LLC, NYSE Regulation and NYSE Market (DE), Inc.

January 7, 2015.

On November 7, 2014, the New York Stock Exchange LLC ("NYSE" 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 amend the Sixth Amended and Restated Bylaws ("Bylaws") of its wholly-owned subsidiary, NYSE Regulation, Inc. ("NYSE Regulation"), to provide that non-affiliated directors of NYSE Regulation ("Non-Affiliated Directors")<sup>3</sup> would not be removed for cause if they are acting in good faith in exercising their responsibilities as

directors related to NYSE Regulation's functions and responsibilities delegated to it under the delegation agreement between the Exchange, NYSE Regulation, and NYSE Market (DE), Inc. ("Delegation Agreement").<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on November 26, 2014.<sup>5</sup> The Commission did not receive any comment letters regarding the proposal. This order approves the proposed rule change.

The Exchange proposes to amend Article III, Section 4 of the Bylaws to provide that Non-Affiliated Directors would not be removed for cause if they are acting in good faith in exercising their responsibilities as directors related to the functions and responsibilities of NYSE Regulation delegated to it under the Delegation Agreement. The Exchange also proposes to make a conforming change to the Bylaws so that the title of the Bylaws would read "Seventh Amended and Restated Bylaws of NYSE Regulation, Inc."

Currently, Article III, Section 4 of the Bylaws provides that the Exchange may only remove Non-Affiliated Directors for "cause." The Exchange proposes to amend Article III, Section 4 so that "cause" would not encompass "decisions or actions taken in good faith by a Non-Affiliated Director in his or her capacity as a Director of [NYSE Regulation] and related" to NYSE Regulation's delegated regulatory functions and responsibilities under the Delegation Agreement. The Exchange stated that this proposed amendment to the Bylaws would make explicit that conduct consistent with a Non-Affiliated Director's duties and responsibilities related to NYSE Regulation's delegated functions and responsibilities would not constitute grounds for removal.

After careful review, 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>6</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>7</sup> which requires an

exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance with its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, 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 Commission notes that the proposed amendment to the Bylaws would make explicit that conduct consistent with a Non-Affiliated Director's duties and responsibilities related to NYSE Regulation's delegated functions and responsibilities would not constitute grounds for such director's removal from NYSE Regulation's Board of Directors. The Exchange stated that the proposed amendment to the Bylaws would provide Non-Affiliated Directors of NYSE Regulation with reasonable assurances that actions or decisions, which were consistent with their fiduciary duty and which such Non-Affiliated Directors believed, in good faith, to be the proper exercise of NYSE Regulation's delegated functions and responsibilities, could not be used as a basis to remove those directors from office. The Exchange believes that the proposal would remove uncertainty surrounding this issue and would contribute to a more effective, efficient, and orderly decision-making process by NYSE Regulation's Board of Directors. Based on the foregoing, the Commission believes the proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2014-62) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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<sup>33</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> The Bylaws define "Non-Affiliated Directors" as U.S. Persons who are not members of the Board of Directors of Intercontinental Exchange, Inc. ("ICE") and qualify as independent under NYSE Regulation's director independence policy. See Bylaws of NYSE Regulation, Inc., Article III, Section 1(A); see also 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 Regulation's director independence policy). The Bylaws require that a majority of NYSE Regulation's Board of Directors consist of Non-Affiliated Directors. The remaining directors are NYSE Regulation's Chief Executive Officer ("CEO") and members of the ICE Board of Directors that qualify as independent under NYSE Regulation's director independence policy. The Exchange represents that the Bylaws do not require any affiliated directors other than the NYSE Regulation CEO.

<sup>4</sup> See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (approving NYSE's business combination with Archipelago Holdings, Inc.). The Exchange has posted a copy of the Delegation Agreement on its public Web site at [www.nyse.com](http://www.nyse.com).

<sup>5</sup> See Securities Exchange Act Release No. 73657 (November 20, 2014), 79 FR 70608 (SR-NYSE-2014-62).

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(1).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 17 CFR 200.30-3(a)(12).