

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 38	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2012 - * 039	Amendment No. (req. for Amendments *)				
Proposed Rule Change by BATS Exchange Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934								
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>			
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule					
			19b-4(f)(1) <input type="checkbox"/>	19b-4(f)(2) <input type="checkbox"/>	19b-4(f)(3) <input type="checkbox"/>	19b-4(f)(4) <input type="checkbox"/>	19b-4(f)(5) <input type="checkbox"/>	19b-4(f)(6) <input type="checkbox"/>
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>						
<b>Description</b> Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). Proposed rule change to amend BATS Rule 14.10, entitled "Corporate Governance Requirements," in accordance with the provisions of Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.								
<b>Contact Information</b> Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change. First Name * Anders Last Name * Franzon Title * VP, Associate General Counsel E-mail * afranzon@batstrading.com Telephone * (913) 815-7154 Fax (913) 815-7119								
<b>Signature</b> Pursuant to the requirements of the Securities Exchange Act of 1934,  has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer. Date 09/25/2012 By Anders Franzon (Name *) VP, Associate General Counsel (Title *)  NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.  Anders Franzon,								

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

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> BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend BATS Rule 14.10, entitled “Corporate Governance Requirements,” in accordance with the provisions of Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) requiring the listing rules of a national securities exchange to prohibit the listing of any equity security of an issuer that is not in compliance with certain compensation committee and compensation adviser requirements, as well as modifying the numbering of Rule 14.10 in order to accommodate the proposed amendments and additions.

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on September 25, 2012. No other action is necessary for the filing of the rule change.

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

<sup>2</sup> 17 CFR 240.19b-4.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (913) 815-7000.

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

(a) Purpose

Section 952 of the Dodd-Frank Act added Section 10C to the Act,<sup>3</sup> which requires the listing rules of each national securities exchange to prohibit the listing of any equity security of an issuer that is not in compliance with the compensation committee and compensation adviser requirements of Rule 10C-1 under the Act ("Rule 10C-1").<sup>4</sup> Specifically, Rule 10C-1 requires the Exchange to establish listing standards that require each member of a listed issuer's compensation committee to be a member of the board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. Rule 10C-1 also requires the Exchange to establish standards for evaluating the independence of a compensation consultant, legal counsel, or other adviser ("Compensation Consultant") and requires a Company to provide funding to a compensation committee to retain such Compensation Consultant. Accordingly, in order to carry out the requirements of Section 952 of the Dodd-Frank Act, the Exchange proposes to make several amendments to Rule 14.10.

The Exchange proposes to amend Rule 14.10(c)(4)(A) to require that, in addition to meeting the criteria listed under Rule 14.10(c)(1)(B), in evaluating the independence of a director acting in the capacity described in Rule 14.10(c)(4)(B), the board of directors

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<sup>3</sup> 15 U.S.C. 78f(b).

of a Company<sup>4</sup> shall consider the following factors: (i) the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and (ii) whether the director is affiliated with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the Company.

The Exchange believes that the adoption of proposed Rule 14.10(c)(4)(A), along with the existing bright line tests for director independence under Rule 14.10(c)(1)(B), would bring the Exchange in compliance with Rule 10C-1(b)(1), because the Rules would require that each director that is acting in the capacity described in Rule 14.10(c)(4)(B) be independent based on an evaluation by the board that include the consideration of the proposed factors in Rule 14.10(c)(4)(A). In determining these independence requirements, the Exchange considered relevant factors, including, but not limited to: the source of compensation of a director, including any consulting, advisory or other compensatory fee paid by the Company to such director and whether the director of a Company is affiliated with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the Company. After considering the factors provided in Rule 10C-1(b)(1)(ii) and evaluating how the factors could impact the ability of a director to act independently in the determination executive compensation, the Exchange believes that it can best comply with Rule 10C-1 by adopting in its Rules the factors set forth in Rule 10C-1(b)(1)(ii). The Exchange believes that this approach will best provide the board of directors of a Company with the requisite guidance and discretion to evaluate the independence of each director as it relates to the determination of executive compensation.

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<sup>4</sup> As defined in BATS Rule 14.1(a)(3).

The Exchange is also proposing to delete existing Rule 14.10(c)(4)(C). As currently written, Rule 14.10(c)(4)(C) provides an exception to the independence standards under Rule 14.10(c)(4)(A) and (B) where the compensation committee is comprised of at least three members, permitting one director who is not independent and is not a current officer or employee or a family member of an officer or employee to be appointed to the compensation committee if the board determines that such individual's membership is required by the best interest of the Company. However, no such exception exists under Rule 10C-1 and, after considering the factors relevant to compensation committee independence under Rule 10C-1, the Exchange believes that deletion of the exception under its rules would comply with Rule 10C-1.

Additionally, the Exchange is proposing to add Rule 14.10(c)(4)(C)(i) to permit the compensation committee of a Company, acting in its capacity as a committee of the Company's board of directors and in its sole discretion, to retain or obtain the advice of a Compensation Consultant. The Company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a Compensation Consultant retained by the compensation committee. The Exchange believes that this proposed Rule 14.10(c)(4)(C)(i) would comply with Rule 10C-1 and, more specifically, Rule 10C-1(b)(2)(i) in that it would provide the compensation committee of the Company's board of directors with the authority to retain or obtain the advice of a Compensation Consultant. Further, proposed Rule 14.10(c)(4)(C)(i) would require the Company to provide appropriate funding to the compensation committee for such Compensation Consultant, as required under Rule 10C-1(b)(3).

The Exchange is also proposing to amend Rule 14.10(c)(4)(C)(ii) to require Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B), regardless of whether the Independent Directors are acting as a committee of the Company's board of directors, that are selecting a Compensation Consultant to perform an independence assessment of the Compensation Consultant, as described below, prior to selecting the Compensation Consultant. An independence assessment is not required for the receipt of advice from in-house legal counsel. An independence assessment would include the consideration of the following factors: (i) the provision of other services to the Company by the person that employs the Compensation Consultant; (ii) the amount of fees received from the Company by the person that employs the Compensation Consultant, as a percentage of the total revenue of the person that employs the Compensation Consultant; (iii) the policies and procedures of the person that employs the Compensation Consultant that are designed to prevent conflicts of interest; (iv) any business or personal relationship of the Compensation Consultant with any of the Independent Directors acting in the capacity described in Rule 14.10(c)(4)(B); (v) any stock of the Company owned by the Compensation Consultant; and (vi) any business or personal relationship of the Compensation Consultant, legal counsel, other adviser, or the person employing the Compensation Consultant with an executive officer of the Company.

The Exchange believes that proposed Rule 14.10(c)(4)(C)(ii) would comply with Rule 10C-1 and, more specifically, Rule 10C-1(b)(4) because the proposed rule would require any Compensation Consultant retained by a group of Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B) to be

independent, as required under Rule 10C-1(b)(4). Further, proposed Rule 14.10(c)(4)(C)(ii) would require the Independent Directors to perform an independence assessment of the Compensation Consultant based on the factors required by Rule 10C-1(b)(4)(i)-(vi). Lastly, because proposed Rule 14.10(c)(4)(C)(ii) would adopt the standards exactly as provided in Rule 10C-1(b)(4), the Exchange believes that it would be in compliance with Rule 10C-1.

In addition, the Exchange is proposing to amend Rule 14.10(c)(4)(C)(iii) and (iv), also regarding Compensation Consultants. Specifically, the Exchange is proposing that Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B) (i) shall be directly responsible for the appointment, compensation and oversight of the work of any retained Compensation Consultant; and (ii) shall not be required to implement or act consistently with the advice or recommendations of the retained Compensation Consultant, nor be restricted in their ability or obligation to exercise their own judgment in fulfilling their duties. The Exchange believes that proposed Rules 14.10(c)(4)(C)(iii) and (iv) comply with Rule 10C-1 and, more specifically, Rule 10C-1(b)(ii) and (iii), in that the proposed rules mirror exactly the requirements of Rule 10C-1(b)(ii) and (iii) and, therefore, would bring the Exchange's listing rules in compliance with Rule 10C-1.

The Exchange is also proposing to add Rule 14.10(c)(4)(D), which provides a Company that fails to comply with the composition committee requirements under Rule 14.10(c)(4)(B) because a director ceases to be independent for reasons outside the director's reasonable control with a cure period during which the Company may allow that director to continue to act in the capacity described in Rule 14.10(c)(4)(B) until the



earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. A Company relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstances that caused the noncompliance. The Exchange believes that proposed Rule 14.10(c)(4)(D) would comply with Rule 10C-1(a)(3), which requires the Exchange to provide for appropriate procedures for a listed issuer to have a reasonable opportunity to cure any defects that would be the basis for a prohibition before the imposition of such prohibition. Rule 10C-1(a)(3) also describes a cure period that would be compliant with Rule 10C-1(a)(3), which the Exchange has proposed to adopt. For these reasons, the Exchange believes that proposed Rule 14.10(c)(4)(D) would comply with Rule 10C-1(a)(3).

The Exchange is also proposing to amend Rules 14.10(e)(1)(A) and (B) in order to eliminate exemptions to Rule 14.10(c)(4) for Asset-backed Issuers and Other Passive Issuers and Cooperatives. The Exchange believes that these changes comply with Rule 10C-1 because Rule 10C-1 provides exemptions to independence requirements in certain circumstances as well as general exemptions in other circumstances, however, Rule 10C-1 does not provide any exemptions for asset-backed issuers and other passive issuers or for cooperatives. Rule 10C-1 does provide the Exchange with some discretion to provide exemptions to the requirements of Rule 10C-1, however, the Exchange declines to propose exemptions for asset-backed issuers and other passive issuers and cooperatives at this time. For these reasons, the Exchange believes that proposed Rules 14.10(e)(1)(A) and (B) comply with the requirements of Rule 10C-1.

The Exchange is also proposing to amend Rule 14.10(e)(1)(C) to require foreign private issuers to comply with the Compensation Consultants requirement of Rule 14.10(c)(4)(C). The Exchange is proposing the amendment in order to make clear that, while 10C-1(b)(iii)(4) exempts foreign private issuers from the independence requirements of 10C-1(b)(ii), which the proposed Rule 14.10(e)(1)(C) reflects, Rule 10C-1 does not exempt foreign private issuers from the Compensation Consultant requirements under Rule 10C-1(b)(4). As such, the Exchange is proposing to amend its Rules to continue to exempt foreign private issuers from the independence requirements of Rules 14.10(c)(4)(A) and (B), but to make clear that foreign private issuers are not exempt from the Compensation Consultant requirements of Rule 14.10(c)(4)(C). For these reasons, the Exchange believes that the proposed changes to Rule 14.10(e)(1)(C) comply with the requirements of Rule 10C-1.

The Exchange is also proposing to amend Rule 14.10(e)(1)(D)(ix) to require limited partnerships to comply with the Compensation Consultants requirement of Rule 14.10(c)(4)(C). The Exchange is proposing the amendment in order to make its rules reflect that, while 10C-1(b)(iii)(1) exempts limited partnership from the independence requirements of 10C-1(b)(ii), which the proposed Rule 14.10(e)(1)(D) reflects, Rule 10C-1 does not exempt limited partnerships from the Compensation Consultant requirements under Rule 10C-1(b)(4). As such, the Exchange is proposing to amend its rules to continue to exempt limited partnerships from the independence requirements of Rules 14.10(c)(4)(A) and (B), but to make clear that limited partnerships are not exempt from the Compensation Consultant requirements of Rule 14.10(c)(4)(C). For these reasons,

the Exchange believes that the proposed changes to Rule 14.10(e)(1)(D)(ix) comply with the requirements of Rule 10C-1.

The Exchange is also proposing to amend Rule 14.10(e)(1)(E) to make clear that not all managed investment companies are exempt from Rules 14.10(c)(4)(A) and (B), but rather, only open-end management investment companies registered under the Investment Company Act of 1940 are exempt from the requirements. The Exchange is making this proposal in order to make its rules reflect that, while Rule 10C-1(b)(iii)(3) exempts open-end management investment companies registered under the Investment Company Act of 1940 from the independence requirements of Rule 10C-1(b)(ii), this exemption does not apply to all management investment companies. In addition, Rule 10C-1 does not exempt open-end management investment companies from the Compensation Consultant requirements under Rule 10C-1(b)(4). As such, the Exchange is proposing to amend its rules to reflect that open-end management investment companies will not be exempt from the Compensation Consultant requirements under Rule 14.10(c)(4)(C). Because these changes have been made to make Rule 14.10(e)(1)(E) reflect the requirements of Rule 10C-1, the Exchange believes that the proposed changes comply with the requirements of Rule 10C-1.

The Exchange is also proposing to add Rule 14.10(e)(1)(F), which will provide that Companies in bankruptcy proceedings are exempt from the independence requirements of Rules 14.10(c)(4)(A) and (B). The Exchange is making this proposal in order to make its rules reflect that, while Rule 10C-1(b)(iii)(2) exempts companies in bankruptcy proceedings from the independence requirements of 10C-1(b)(ii), Rule 10C-1 does not exempt Companies in bankruptcy proceedings from the Compensation

Consultant requirements under Rule 10C-1(b)(4). As such, the Exchange is proposing to amend its rules to exempt Companies in bankruptcy proceedings from the independence requirements of Rules 14.10(c)(4)(A) and (B), but to make clear that companies in bankruptcy proceedings are not exempt from the Compensation Consultant requirements of Rule 14.10(c)(4)(C). Because these changes have been made to make Rule 14.10(e)(1)(F) reflect the requirements of Rule 10C-1, the Exchange believes that the proposed changes comply with the requirements of Rule 10C-1.

The Exchange is also proposing to add Rule 14.10(e)(1)(G), which will provide that smaller reporting companies, as defined in Rule 12b-2 under the Act (“Smaller Reporting Companies”), are exempt from all of the independence requirements of Rule 14.10(c)(4). The Exchange is making this proposal in order to make its rules reflect that Rule 10C-1(b)(5)(ii) exempts Smaller Reporting Companies from the entirety of Rule 10C-1(b), including the independence and Compensation Consultant requirements under Rule 10C-1. As such, the Exchange is proposing to amend its rules to exempt Smaller Reporting Companies from the independence requirements of Rules 14.10(c)(4)(A) and (B) as well as the Compensation Consultant requirements of Rule 14.10(c)(4)(C). Because these changes have been made to make Rule 14.10(e)(1)(G) reflect the requirements of Rule 10C-1, the Exchange believes that the proposed changes comply with the requirements of Rule 10C-1.

The Exchange also proposes to amend Rule 14.10(e)(2)(A) to allow a Company listing in connection with its initial public offering to phase-in the independent committee requirements set forth in Rules 14.10(c)(4)(A) and (B) as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of

listing; and (3) all independent members within one year of listing. The Exchange believes that this amendment complies with Rule 10C-1 because it provides a Company with the opportunity to gradually meet the requirements of Rules 14.10(c)(4)(A) and (B) after becoming listed in connection with an initial public offering, rather than forcing a Company to meet independence requirements prior to its initial public offering. If the Exchange required Companies to meet the independence requirements of 14.10(c)(4)(A) and (B) in connection with an initial public offering, it might prevent companies from seeking an initial public offering altogether.

The Exchange also proposes to add Rule 14.10(e)(2)(D) in order to permit a Company listed on the Exchange prior to the effective date of this proposal, commencing on June 1, 2013, to phase-in compliance with the Independent Director Oversight of Executive Officer Compensation requirements set forth in Rules 14.10(c)(4)(A) and (B) on the same schedule as Companies listing in conjunction with their initial public offering.

The Exchange also proposes to make a clarifying amendment to Rule 14.10(c)(1)(B), which defines an Independent Director, in order to indicate that there are additional factors involved in the determination of independence for directors acting in the capacity described in Rule 14.10(c)(4)(b). Lastly, the Exchange proposes to modify the numbering of Rule 14.10 in order to accommodate the amendments and additions proposed above.

(b) Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a

national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>5</sup> The Exchange believes that proposed Rule 14.10 is consistent with Section 6(b)(5) of the Act,<sup>6</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange is adopting proposed Rule 14.10 to comply with the requirements of Section 952 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest.

The Exchange also believes that the proposal will contribute to investor protection and the public interest by requiring that only Independent Directors of an issuer oversee executive officer compensation matters, consider independence criteria before retaining compensation advisers, and have ultimate responsibility for the appointment, compensation, and oversight of these advisers. As discussed above, after considering the factors provided in Rule 10C-1(b)(1)(ii) and evaluating how the factors could impact the ability of a director to act independently in the determination executive compensation, the Exchange believes that it can best comply with Rule 10C-1 by adopting in its Rules the factors set forth in Rule 10C-1(b)(1)(ii). The Exchange believes that this approach will best provide the board of directors of a Company with the requisite guidance and discretion to evaluate the independence of each director as it relates to the determination of executive compensation.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

The proposed rule change does not impose any burden on competition.

5. 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 written comments from members or other interested parties.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2012-039)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to Adopt Listing Standards Related to Certain Compensation Committee and Compensation Adviser Requirements.

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 September 25, 2012, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“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’s proposed rule change would amend BATS Rule 14.10, entitled “Corporate Governance Requirements,” in accordance with the provisions of Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) requiring the listing rules of a national securities exchange to prohibit the listing of any equity security of an issuer that is not in compliance with certain compensation committee and compensation adviser requirements, as well as modifying the numbering of Rule 14.10 in order to accommodate the proposed amendments and additions.

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

<sup>2</sup> 17 CFR 240.19b-4.



The text of the proposed rule change is available at the Exchange's website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room. The proposed rule text can be found in Exhibit 5.

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 these 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

Section 952 of the Dodd-Frank Act added Section 10C to the Act,<sup>3</sup> which requires the listing rules of each national securities exchange to prohibit the listing of any equity security of an issuer that is not in compliance with the compensation committee and compensation adviser requirements of Rule 10C-1 under the Act ("Rule 10C-1").<sup>4</sup> Specifically, Rule 10C-1 requires the Exchange to establish listing standards that require each member of a listed issuer's compensation committee to be a member of the board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. Rule 10C-1 also requires the Exchange to establish standards for evaluating the independence of a compensation consultant, legal counsel, or other adviser ("Compensation Consultant") and requires a Company to

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<sup>3</sup> 15 U.S.C. 78f(b).

provide funding to a compensation committee to retain such Compensation Consultant. Accordingly, in order to carry out the requirements of Section 952 of the Dodd-Frank Act, the Exchange proposes to make several amendments to Rule 14.10.

The Exchange proposes to amend Rule 14.10(c)(4)(A) to require that, in addition to meeting the criteria listed under Rule 14.10(c)(1)(B), in evaluating the independence of a director acting in the capacity described in Rule 14.10(c)(4)(B), the board of directors of a Company<sup>4</sup> shall consider the following factors: (i) the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and (ii) whether the director is affiliated with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the Company.

The Exchange believes that the adoption of proposed Rule 14.10(c)(4)(A), along with the existing bright line tests for director independence under Rule 14.10(c)(1)(B), would bring the Exchange in compliance with Rule 10C-1(b)(1), because the Rules would require that each director that is acting in the capacity described in Rule 14.10(c)(4)(B) be independent based on an evaluation by the board that include the consideration of the proposed factors in Rule 14.10(c)(4)(A). In determining these independence requirements, the Exchange considered relevant factors, including, but not limited to: the source of compensation of a director, including any consulting, advisory or other compensatory fee paid by the Company to such director and whether the director of a Company is affiliated with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the Company. After considering the factors provided in Rule 10C-1(b)(1)(ii) and evaluating how the factors could impact the ability of a director to act

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<sup>4</sup> As defined in BATS Rule 14.1(a)(3).

independently in the determination executive compensation, the Exchange believes that it can best comply with Rule 10C-1 by adopting in its Rules the factors set forth in Rule 10C-1(b)(1)(ii). The Exchange believes that this approach will best provide the board of directors of a Company with the requisite guidance and discretion to evaluate the independence of each director as it relates to the determination of executive compensation.

The Exchange is also proposing to delete existing Rule 14.10(c)(4)(C). As currently written, Rule 14.10(c)(4)(C) provides an exception to the independence standards under Rule 14.10(c)(4)(A) and (B) where the compensation committee is comprised of at least three members, permitting one director who is not independent and is not a current officer or employee or a family member of an officer or employee to be appointed to the compensation committee if the board determines that such individual's membership is required by the best interest of the Company. However, no such exception exists under Rule 10C-1 and, after considering the factors relevant to compensation committee independence under Rule 10C-1, the Exchange believes that deletion of the exception under its rules would comply with Rule 10C-1.

Additionally, the Exchange is proposing to add Rule 14.10(c)(4)(C)(i) to permit the compensation committee of a Company, acting in its capacity as a committee of the Company's board of directors and in its sole discretion, to retain or obtain the advice of a Compensation Consultant. The Company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a Compensation Consultant retained by the compensation committee. The Exchange believes that this proposed Rule 14.10(c)(4)(C)(i) would comply with Rule 10C-1 and,

more specifically, Rule 10C-1(b)(2)(i) in that it would provide the compensation committee of the Company's board of directors with the authority to retain or obtain the advice of a Compensation Consultant. Further, proposed Rule 14.10(c)(4)(C)(i) would require the Company to provide appropriate funding to the compensation committee for such Compensation Consultant, as required under Rule 10C-1(b)(3).

The Exchange is also proposing to amend Rule 14.10(c)(4)(C)(ii) to require Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B), regardless of whether the Independent Directors are acting as a committee of the Company's board of directors, that are selecting a Compensation Consultant to perform an independence assessment of the Compensation Consultant, as described below, prior to selecting the Compensation Consultant. An independence assessment is not required for the receipt of advice from in-house legal counsel. An independence assessment would include the consideration of the following factors: (i) the provision of other services to the Company by the person that employs the Compensation Consultant; (ii) the amount of fees received from the Company by the person that employs the Compensation Consultant, as a percentage of the total revenue of the person that employs the Compensation Consultant; (iii) the policies and procedures of the person that employs the Compensation Consultant that are designed to prevent conflicts of interest; (iv) any business or personal relationship of the Compensation Consultant with any of the Independent Directors acting in the capacity described in Rule 14.10(c)(4)(B); (v) any stock of the Company owned by the Compensation Consultant; and (vi) any business or personal relationship of the Compensation Consultant, legal counsel, other

adviser, or the person employing the Compensation Consultant with an executive officer of the Company.

The Exchange believes that proposed Rule 14.10(c)(4)(C)(ii) would comply with Rule 10C-1 and, more specifically, Rule 10C-1(b)(4) because the proposed rule would require any Compensation Consultant retained by a group of Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B) to be independent, as required under Rule 10C-1(b)(4). Further, proposed Rule 14.10(c)(4)(C)(ii) would require the Independent Directors to perform an independence assessment of the Compensation Consultant based on the factors required by Rule 10C-1(b)(4)(i)-(vi). Lastly, because proposed Rule 14.10(c)(4)(C)(ii) would adopt the standards exactly as provided in Rule 10C-1(b)(4), the Exchange believes that it would be in compliance with Rule 10C-1.

In addition, the Exchange is proposing to amend Rule 14.10(c)(4)(C)(iii) and (iv), also regarding Compensation Consultants. Specifically, the Exchange is proposing that Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B) (i) shall be directly responsible for the appointment, compensation and oversight of the work of any retained Compensation Consultant; and (ii) shall not be required to implement or act consistently with the advice or recommendations of the retained Compensation Consultant, nor be restricted in their ability or obligation to exercise their own judgment in fulfilling their duties. The Exchange believes that proposed Rules 14.10(c)(4)(C)(iii) and (iv) comply with Rule 10C-1 and, more specifically, Rule 10C-1(b)(ii) and (iii), in that the proposed rules mirror exactly the

requirements of Rule 10C-1(b)(ii) and (iii) and, therefore, would bring the Exchange's listing rules in compliance with Rule 10C-1.

The Exchange is also proposing to add Rule 14.10(c)(4)(D), which provides a Company that fails to comply with the composition committee requirements under Rule 14.10(c)(4)(B) because a director ceases to be independent for reasons outside the director's reasonable control with a cure period during which the Company may allow that director to continue to act in the capacity described in Rule 14.10(c)(4)(B) until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. A Company relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstances that caused the noncompliance. The Exchange believes that proposed Rule 14.10(c)(4)(D) would comply with Rule 10C-1(a)(3), which requires the Exchange to provide for appropriate procedures for a listed issuer to have a reasonable opportunity to cure any defects that would be the basis for a prohibition before the imposition of such prohibition. Rule 10C-1(a)(3) also describes a cure period that would be compliant with Rule 10C-1(a)(3), which the Exchange has proposed to adopt. For these reasons, the Exchange believes that proposed Rule 14.10(c)(4)(D) would comply with Rule 10C-1(a)(3).

The Exchange is also proposing to amend Rules 14.10(e)(1)(A) and (B) in order to eliminate exemptions to Rule 14.10(c)(4) for Asset-backed Issuers and Other Passive Issuers and Cooperatives. The Exchange believes that these changes comply with Rule 10C-1 because Rule 10C-1 provides exemptions to independence requirements in certain circumstances as well as general exemptions in other circumstances, however, Rule 10C-

1 does not provide any exemptions for asset-backed issuers and other passive issuers or for cooperatives. Rule 10C-1 does provide the Exchange with some discretion to provide exemptions to the requirements of Rule 10C-1, however, the Exchange declines to propose exemptions for asset-backed issuers and other passive issuers and cooperatives at this time. For these reasons, the Exchange believes that proposed Rules 14.10(e)(1)(A) and (B) comply with the requirements of Rule 10C-1.

The Exchange is also proposing to amend Rule 14.10(e)(1)(C) to require foreign private issuers to comply with the Compensation Consultants requirement of Rule 14.10(c)(4)(C). The Exchange is proposing the amendment in order to make clear that, while 10C-1(b)(iii)(4) exempts foreign private issuers from the independence requirements of 10C-1(b)(ii), which the proposed Rule 14.10(e)(1)(C) reflects, Rule 10C-1 does not exempt foreign private issuers from the Compensation Consultant requirements under Rule 10C-1(b)(4). As such, the Exchange is proposing to amend its Rules to continue to exempt foreign private issuers from the independence requirements of Rules 14.10(c)(4)(A) and (B), but to make clear that foreign private issuers are not exempt from the Compensation Consultant requirements of Rule 14.10(c)(4)(C). For these reasons, the Exchange believes that the proposed changes to Rule 14.10(e)(1)(C) comply with the requirements of Rule 10C-1.

The Exchange is also proposing to amend Rule 14.10(e)(1)(D)(ix) to require limited partnerships to comply with the Compensation Consultants requirement of Rule 14.10(c)(4)(C). The Exchange is proposing the amendment in order to make its rules reflect that, while 10C-1(b)(iii)(1) exempts limited partnership from the independence requirements of 10C-1(b)(ii), which the proposed Rule 14.10(e)(1)(D) reflects, Rule 10C-

1 does not exempt limited partnerships from the Compensation Consultant requirements under Rule 10C-1(b)(4). As such, the Exchange is proposing to amend its rules to continue to exempt limited partnerships from the independence requirements of Rules 14.10(c)(4)(A) and (B), but to make clear that limited partnerships are not exempt from the Compensation Consultant requirements of Rule 14.10(c)(4)(C). For these reasons, the Exchange believes that the proposed changes to Rule 14.10(e)(1)(D)(ix) comply with the requirements of Rule 10C-1.

The Exchange is also proposing to amend Rule 14.10(e)(1)(E) to make clear that not all managed investment companies are exempt from Rules 14.10(c)(4)(A) and (B), but rather, only open-end management investment companies registered under the Investment Company Act of 1940 are exempt from the requirements. The Exchange is making this proposal in order to make its rules reflect that, while Rule 10C-1(b)(iii)(3) exempts open-end management investment companies registered under the Investment Company Act of 1940 from the independence requirements of Rule 10C-1(b)(ii), this exemption does not apply to all management investment companies. In addition, Rule 10C-1 does not exempt open-end management investment companies from the Compensation Consultant requirements under Rule 10C-1(b)(4). As such, the Exchange is proposing to amend its rules to reflect that open-end management investment companies will not be exempt from the Compensation Consultant requirements under Rule 14.10(c)(4)(C). Because these changes have been made to make Rule 14.10(e)(1)(E) reflect the requirements of Rule 10C-1, the Exchange believes that the proposed changes comply with the requirements of Rule 10C-1.



The Exchange is also proposing to add Rule 14.10(e)(1)(F), which will provide that Companies in bankruptcy proceedings are exempt from the independence requirements of Rules 14.10(c)(4)(A) and (B). The Exchange is making this proposal in order to make its rules reflect that, while Rule 10C-1(b)(iii)(2) exempts companies in bankruptcy proceedings from the independence requirements of 10C-1(b)(ii), Rule 10C-1 does not exempt Companies in bankruptcy proceedings from the Compensation Consultant requirements under Rule 10C-1(b)(4). As such, the Exchange is proposing to amend its rules to exempt Companies in bankruptcy proceedings from the independence requirements of Rules 14.10(c)(4)(A) and (B), but to make clear that companies in bankruptcy proceedings are not exempt from the Compensation Consultant requirements of Rule 14.10(c)(4)(C). Because these changes have been made to make Rule 14.10(e)(1)(F) reflect the requirements of Rule 10C-1, the Exchange believes that the proposed changes comply with the requirements of Rule 10C-1.

The Exchange is also proposing to add Rule 14.10(e)(1)(G), which will provide that smaller reporting companies, as defined in Rule 12b-2 under the Act (“Smaller Reporting Companies”), are exempt from all of the independence requirements of Rule 14.10(c)(4). The Exchange is making this proposal in order to make its rules reflect that Rule 10C-1(b)(5)(ii) exempts Smaller Reporting Companies from the entirety of Rule 10C-1(b), including the independence and Compensation Consultant requirements under Rule 10C-1. As such, the Exchange is proposing to amend its rules to exempt Smaller Reporting Companies from the independence requirements of Rules 14.10(c)(4)(A) and (B) as well as the Compensation Consultant requirements of Rule 14.10(c)(4)(C). Because these changes have been made to make Rule 14.10(e)(1)(G) reflect the

requirements of Rule 10C-1, the Exchange believes that the proposed changes comply with the requirements of Rule 10C-1.

The Exchange also proposes to amend Rule 14.10(e)(2)(A) to allow a Company listing in connection with its initial public offering to phase-in the independent committee requirements set forth in Rules 14.10(c)(4)(A) and (B) as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of listing; and (3) all independent members within one year of listing. The Exchange believes that this amendment complies with Rule 10C-1 because it provides a Company with the opportunity to gradually meet the requirements of Rules 14.10(c)(4)(A) and (B) after becoming listed in connection with an initial public offering, rather than forcing a Company to meet independence requirements prior to its initial public offering. If the Exchange required Companies to meet the independence requirements of 14.10(c)(4)(A) and (B) in connection with an initial public offering, it might prevent companies from seeking an initial public offering altogether.

The Exchange also proposes to add Rule 14.10(e)(2)(D) in order to permit a Company listed on the Exchange prior to the effective date of this proposal, commencing on June 1, 2013, to phase-in compliance with the Independent Director Oversight of Executive Officer Compensation requirements set forth in Rules 14.10(c)(4)(A) and (B) on the same schedule as Companies listing in conjunction with their initial public offering.

The Exchange also proposes to make a clarifying amendment to Rule 14.10(c)(1)(B), which defines an Independent Director, in order to indicate that there are additional factors involved in the determination of independence for directors acting in

the capacity described in Rule 14.10(c)(4)(b). Lastly, the Exchange proposes to modify the numbering of Rule 14.10 in order to accommodate the amendments and additions proposed above.

## 2. Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>5</sup> The Exchange believes that proposed Rule 14.10 is consistent with Section 6(b)(5) of the Act,<sup>6</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange is adopting proposed Rule 14.10 to comply with the requirements of Section 952 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest.

The Exchange also believes that the proposal will contribute to investor protection and the public interest by requiring that only Independent Directors of an issuer oversee executive officer compensation matters, consider independence criteria before retaining compensation advisers, and have ultimate responsibility for the appointment, compensation, and oversight of these advisers. As discussed above, after considering the factors provided in Rule 10C-1(b)(1)(ii) and evaluating how the factors could impact the

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

ability of a director to act independently in the determination executive compensation, the Exchange believes that it can best comply with Rule 10C-1 by adopting in its Rules the factors set forth in Rule 10C-1(b)(1)(ii). The Exchange believes that this approach will best provide the board of directors of a Company with the requisite guidance and discretion to evaluate the independence of each director as it relates to the determination of executive compensation.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes 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 Exchange consents, the Commission will: (a) by order approve or disapprove such 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 proposal 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 No. SR-BATS-2012-039 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 No. SR-BATS-2012-039. 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 changes 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 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office 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 No. SR-BATS-2012-039 and should be submitted on or before [\_\_\_\_\_21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to  
delegated authority.<sup>7</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).

Note: Proposed new language is underlined. Proposed deletions are enclosed in [brackets].

**Rules of BATS Exchange, Inc.**

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**CHAPTER XI. BATS EXCHANGE LISTING RULES**

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Rule 14.10. Corporate Governance Requirements.

(a) – (b) No change.

(c) Board of Directors and Committees

(1) Definitions

(A) No change.

(B) “Independent Director” means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company’s board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this rule, “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 following persons shall not be considered independent:

(i) – (vii) No change.

In addition to the requirements contained in this Rule 14.10(c)(1)(B), directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B) (relating to compensation of Executive Officers) are also subject to additional factors for determining independence under Rule 14.10(c)(4).

(2) – (3) No change.

(4) Independent Director Oversight of Executive Officer Compensation

(A) Composition

(i) In addition to meeting the criteria listed under Rule 14.10(c)(1)(B), in evaluating the independence of a director to determine if such director is permitted to act in the capacity described in Rule

14.10(c)(4)(B), the board of directors of a Company shall consider the following factors:

(a) The source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and

(b) Whether the director is affiliated with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the Company.

(B) Determination of Compensation of Executive Officers

[(A)] (i) Compensation of the chief executive officer of the Company must be determined, or recommended to the Board for determination, either by:

[(i)] (a) Independent Directors constituting a majority of the Board's Independent Directors in a vote in which only Independent Directors participate; or

[(ii)] (b) a compensation committee comprised solely of Independent Directors.

The chief executive officer may not be present during voting or deliberations.

[(B)] (ii) Compensation of all other Executive Officers must be determined, or recommended to the Board for determination, either by:

[(i)] (a) Independent Directors constituting a majority of the Board's Independent Directors in a vote in which only Independent Directors participate; or

[(ii)] (b) a compensation committee comprised solely of Independent Directors.

[(C) Non-Independent Committee Member under Exceptional and Limited Circumstances

Notwithstanding paragraphs (A)(ii) and (B)(ii) above, if the compensation committee is comprised of at least three members, one director who is not independent as defined in Rule 14.10(c)(1)(B) and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the compensation committee if the board, under exceptional and



limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for the next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.]

(C) Compensation Consultants

(i) The compensation committee of a Company, in its capacity as a committee of the Company's board of directors may, in its sole discretion, retain or obtain the advice of a compensation consultant, independent legal counsel, or other adviser. The Company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, independent legal counsel, or any other adviser retained by the compensation committee.

(ii) Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B) (whether or not acting as a committee of the Company's board of directors) may select a compensation consultant, legal counsel, or other adviser only after performing an independence assessment, as described below. An independence assessment is not required for the receipt of advice from in-house legal counsel. An independence assessment shall include a consideration of the following factors:

(a) The provision of other services to the Company by the person that employs the compensation consultant, legal counsel, or other adviser;

(b) The amount of fees received from the Company by the person that employs the compensation consultant, legal counsel, or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel, or other adviser;

(c) The policies and procedures of the person that employs the compensation consultant, legal counsel, or other adviser that are designed to prevent conflicts of interest;

(d) Any business or personal relationship of the compensation consultant, legal counsel, or other adviser with any of the Independent Directors acting in the capacity described in Rule 14.10(c)(4)(B);

(e) Any stock of the Company owned by the compensation consultant, legal counsel, or other adviser; and

(f) Any business or personal relationship of the compensation consultant, legal counsel, other adviser, or the person employing the adviser with an executive officer of the Company.

(iii) The Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B) shall be directly responsible for the appointment, compensation and oversight of the work of any retained compensation consultant, independent legal counsel or other adviser.

(iv) The Independent Directors of a Company that are acting in the capacity described in Rule 14.10(c)(4)(B) are not required to implement or act consistently with the advice or recommendations of the retained compensation consultant, independent legal counsel or other adviser, nor are such Independent Directors restricted in their ability or obligation to exercise their own judgment in fulfilling their duties under Rule 14.10(c)(4).

(D) Cure Periods

(i) If a Company fails to comply with the composition committee requirements under Rule 14.10(c)(4)(B) because a director ceases to be independent for reasons outside the director's reasonable control, that director may continue to act in the capacity described in Rule 14.10(c)(4)(B) until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. A Company relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstances that caused the noncompliance.

(5) No change.

(d) No change.

(e) Exemptions from Certain Corporate Governance Requirements

This Rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, [and ]Companies transferring from other markets, and Companies listed on the Exchange prior to June 1, 2013. This [rule] Rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.

(1) Exemptions to the Corporate Governance Requirements

(A) Asset-backed Issuers and Other Passive Issuers

[The following are exempt from the requirements relating to Majority Independent Board [Rule 14.10(c)(2)(A)], Audit Committee [Rule 14.10(c)(3)], Independent Director Oversight of Executive Officer Compensation and Director Nominations [Rule 14.10(c)(4) and (5)], the Controlled Company Exemption [Rule 14.10(e)(3)(B)], and Code of Conduct [Rule 14.10(d)]:]

The following are exempt from the requirements relating to Majority Independent Board (Rule 14.10(c)(2)(A)), Audit Committee (Rule 14.10(c)(3)), Independent Director Oversight of Director Nominations (Rule 14.10(c)(5)), the Controlled Company Exemption (Rule 14.10(e)(3)(B)), and Code of Conduct (Rule 14.10(d)):

(i) – (ii) No change.

(B) Cooperatives

Cooperative entities, such as agricultural cooperatives, that are structured to comply with relevant state law and federal tax law and that do not have a publicly traded class of common stock are exempt from Rules 14.10(c)(2), [14.10(c)(4),] 14.10(c)(5) and 14.10(e)(3)(B). However, such entities must comply with all federal securities laws, including without limitation those rules required by Section 10A(m) of the Act and Rule 10A-3 thereunder.

(C) Foreign Private Issuers

(i) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rule 14.10, the requirement to distribute annual and interim reports set forth in Rule 14.6(d), and the Direct Registration Program requirement set forth in Rules 14.3(b)(3) and 14.7, provided, however, that such a Company shall: comply with the Notification of Material Noncompliance requirement (Rule 14.10(g)), the Voting Rights requirement (Rule 14.10(j)), have an audit committee that satisfies Rule 14.10(c)(3)(C), [and] ensure that such audit committee's members meet the independence requirement in Rule 14.10(c)(2), and comply with the Compensation Consultants requirement (Rule

14.10(c)(4)(C)). Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of Chapter XIV.

(ii) No change.

(D) Limited Partnerships. A limited partnership is not subject to the requirements of Rule 14.10, except as provided in this paragraph (D). A limited partnership may request a written interpretation pursuant to Rule 14.10(b). No provision of this Rule shall be construed to require any foreign Company that is a partnership to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such Company or that is contrary to generally accepted business practices in the Company's country of domicile. The Exchange shall have the ability to provide exemptions from applicability of these provisions as may be necessary or appropriate to carry out this intent.

(i) - (viii) No change.

(ix) Compensation Consultants. A Company that is a limited partnership shall be required to comply with the funding and independence requirements of Rule 14.10(c)(4)(C) regarding Compensation Consultants.

(x) Notification of Noncompliance. Each Company that is a limited partnership must provide the Exchange with prompt notification after an Executive Officer of the Company, or a person performing an equivalent role, becomes aware of any noncompliance by the Company with the requirements of Rule 14.10.

(E) Management Investment Companies. Management investment companies (including business development companies) are subject to all the requirements of Rule 14.10, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the Independent Directors requirement, the Independent Director Oversight of [Executive Officer Compensation and] Director Nominations requirements, and the Code of Conduct requirement, set forth in Rules 14.10(c)(2), [14.10(c)(4),] 14.10(c)(5) and 14.10(d), respectively. In addition, management investment companies that are Index Fund Shares and Managed Fund Shares, as defined in Rules 14.11(c) and 14.11(i), are exempt from the Audit Committee requirements set forth in Rule 14.10(c)(3), except for the applicable requirements of SEC Rule 10A-3. Open-end management investment companies registered under the Investment Company Act of 1940 are also exempt from the requirements of Rules 14.10(c)(4)(A) and (B).

(F) Companies in Bankruptcy Proceedings. Companies in bankruptcy proceedings are subject to all of the requirements of Rule 14.10, except that Companies in bankruptcy proceedings are exempt from the Independent Director Oversight of Executive Officer Compensation requirements set forth in Rule 14.10(c)(4)(A) and (B).

(G) Smaller Reporting Companies. Smaller reporting companies, as defined in Rule 12b-2 under the Act, are exempt from the Independent Director Oversight of Executive Officer Compensation requirements set forth in Rule 14.10(c)(4).

(2) Phase-In Schedules

(A) *Initial Public Offerings.* A Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent committee requirements set forth in Rules 14.10(c)(4)(A) and (B) and 14.10(c)(5) on the same schedule as it is permitted to phase in its compliance with the independent audit committee requirement pursuant to Rule 10A-3(b)(1)(iv)(A) under the Act. Accordingly, a Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent committee requirements set forth in Rule 14.10(c)(4)(A) and (B) and 14.10(c)(5) as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of listing; and (3) all independent members within one year of listing. Furthermore, a Company listing in connection with its initial public offering shall have twelve months from the date of listing to comply with the majority independent board requirement in Rule 14.10(c)(2)(A). It should be noted, however, that pursuant to Rule 10A-3(b)(1)(iii) under the Act investment companies are not afforded the exemptions under Rule 10A-3(b)(1)(iv) under the Act. Companies may choose not to adopt a compensation or nomination committee and may instead rely upon a majority of the Independent Directors to discharge responsibilities under Rule 14.10(c)(2). For purposes of Rule 14.10 other than Rules 14.10(c)(3)(B)(i) and 14.10(g), a Company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act. For purposes of Rule 14.10(c)(3)(B) and Rule 14.10(g), a Company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the Company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

(B) – (C) No change.

(D) Companies Listed Prior to June 1, 2013. A Company listed on the Exchange prior to June 1, 2013 shall be permitted, commencing on June 1, 2013, to phase-in compliance with the Independent Director Oversight of Executive Officer Compensation requirements set forth in Rules 14.10(c)(4)(A) and (B) on the same schedule as Companies listing in conjunction with their initial public offering.

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