

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73418; File No. SR-NASDAQ-2014-038]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Listing and Trading of Shares of the NASDAQ-100 DIVS Index ETF Under Rule 5705

October 23, 2014.

On April 10, 2014, The NASDAQ Stock Market LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Reality Shares NASDAQ-100 DIVS Index ETF (“Fund”) (formerly, Reality Shares NASDAQ-100 Isolated Dividend Growth Index ETF) under NASDAQ Rule 5705. The proposed rule change was published for comment in the **Federal Register** on April 30, 2014.³ On May 6, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.⁴ On June 4, 2014, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ On June 13, 2014, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designated a longer

period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁷ On July 29, 2014, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change.⁹ In response to the Order Instituting Proceedings, the Commission received one comment letter on the proposal.¹⁰

Section 19(b)(2) of the Act¹¹ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for that determination. The proposed rule change was published for notice and comment in the **Federal Register** on April 30, 2014.¹² The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is October 27, 2014, and the 240th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is December 26, 2014.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, including the

matters raised in the comment letter to the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹³ designates December 26, 2014 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NASDAQ-2014-038).

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. 34-73412; File No. SR-BATS-2014-052]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 11.9 and 11.13 of BATS Exchange, Inc.

October 23, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 17, 2014, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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 filed a proposal to amend Rules 11.9 and 11.13 to modify the routing strategies made available through the Exchange.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 72014 (Apr. 24, 2014), 79 FR 24465 (“Notice”).

⁴ In Amendment No. 1, the Exchange confirmed the hours of the three trading sessions on the Exchange, clarified the valuation of investments for purposes of calculating net asset value, clarified what information would be available on the Fund's Web site, and provided additional information relating to surveillance with respect to certain assets held by the Fund. Amendment No. 1 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change or raise novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

⁵ The Exchange filed Amendment No. 2 to the proposal to reflect a name change to the Fund and the underlying index. Specifically, the Exchange replaced each reference to “Reality Shares NASDAQ-100 Isolated Dividend Growth ETF” in the proposal with “Reality Shares NASDAQ-100 DIVS Index ETF” and replaced each reference to “Reality Shares NASDAQ-100 Isolated Dividend Growth Index” in the proposal with “Reality Shares NASDAQ-100 DIVS Index.” Amendment No. 2 is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the filing.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release No. 72384, 79 FR 35205 (Jun. 19, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated July 29, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See Securities Exchange Act Release No. 72715, 79 FR 45556 (Aug. 5, 2014) (“Order Instituting Proceedings”). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.” See *id.*

¹⁰ See Letter from Eric Ervin, President, Reality Shares ETF Trust and Reality Shares Advisors, LLC, and President and CEO, Reality Shares, Inc., to Kevin M. O'Neill, Deputy Secretary, Commission, dated August 22, 2014.

¹¹ 15 U.S.C. 78s(b)(2).

¹² See *supra* note 3.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Earlier this year, the Exchange and its affiliate BATS Y-Exchange, Inc. ("BYX") received approval to effect a merger (the "Merger") of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX Exchange, Inc. ("EDGX") and EDGA Exchange, Inc. ("EDGA", and together with BZX, BYX and EDGX, the "BGM Affiliated Exchanges").³ In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges.

The specific proposal set forth in more detail below would amend Rules 11.9 and 11.13, which describe the Exchange's routing options made available by the Exchange. Specifically, the changes to Rule 11.9 would relocate certain routing strategies identified as order types to Rule 11.13. The Exchange is also proposing to eliminate an obsolete routing strategy that is currently listed as an order type. Finally, the Exchange proposes to add to Rule 11.13 to offer many of the same routing strategies offered by EDGA and EDGX. The Exchange notes that the proposed rule text is based on the rules of EDGA and EDGX and is different only to the extent necessary to conform to the Exchange's current rules.⁴

Modifications to Rule 11.9

As noted above, the Exchange proposes to re-locate two routing strategies from Rule 11.9 to Rule 11.13. Rule 11.9 generally contains order types and order type modifiers whereas Rule 11.13 describes routing strategies offered by the Exchange. Accordingly, the Exchange proposes to relocate Destination Specific Orders and Directed Intermarket Sweep Orders ("Directed ISOs") from Rule 11.9 to Rule 11.13 because both orders are routing strategies rather than order types or order type modifiers. The Exchange notes that Rule 11.13 has always reflected that such descriptions are routing strategies by containing a cross-reference to such strategies in Rule 11.13(a)(3). The Exchange is not proposing to modify the description or operation of either Destination Specific Orders or Directed Intermarket Sweep Orders. The Exchange notes that it has proposed minor changes to the wording of both Destination Specific Orders and Directed ISOs in order to conform such routing strategies with the other strategies described in Rule 11.13(a)(3).

The Exchange also proposes to delete from Rule 11.9 an obsolete routing strategy, the Modified Destination Specific Order, which is currently set forth in Rule 11.9(c)(13). Modified Destination Specified Orders are market or limit orders that instruct the System⁵ to route the order to a specified away trading center or centers, as approved by the Exchange from time to time, without first exposing the order to the Exchange's order book (the "BATS Book").⁶ The Exchange notes that it has not had any approved away trading centers for Modified Destination Specific Orders for several years but has retained the order in the event the Exchange determined to offer such routing strategy again. The Exchange believes that it is appropriate to eliminate Modified Destination Specific Orders because they are no longer offered by the Exchange and are unlikely to be offered by the Exchange in the near future.

Additions to Rule 11.13

The Exchange proposes to add several new routing strategies based on routing strategies offered by EDGA and/or EDGX, as set forth below.

11.9(b)(2)(c), 11.9(b)(2)(d), 11.9(b)(2)(h), 11.9(b)(2)(i), 11.9(b)(2)(j), 11.9(b)(2)(n).

⁵ As defined in Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

⁶ As defined in Rule 1.5(e).

The Exchange currently offers various routing strategies under which an order checks the System for available shares if so instructed by the entering User and then is sent to destinations on the applicable System routing table.⁷ Specifically, the Exchange offers TRIM, TRIM2, TRIM3 and SLIM routing strategies. The Exchange proposes to consolidate these routing strategies into a single rule, Rule 11.13(a)(3)(G), and to add to this rule three additional routing strategies under which an order checks the System for available shares and then is sent to destinations on the applicable System routing table, namely ROUT, ROUX and ROUZ. The Exchange also proposes to specify for ROUT and ROUX that the entering User may select either Route To Improve ("RTI") or Route To Fill ("RTF"). RTI may route to multiple destinations at a single price level simultaneously while RTF may route to multiple destinations and at multiple price levels simultaneously.

The Exchange notes that the RTI option coupled with either ROUT or ROUX is similar to the Parallel D routing strategy described in current Rule 11.13(a)(3)(B) in that it routes to multiple destinations simultaneously but at a single price level whereas the RTF option coupled with either ROUT or ROUX is similar to the Parallel 2D routing strategy described in current Rule 11.13(a)(3)(C). The only distinction between Parallel D and Parallel 2D on one hand and ROUT or ROUX coupled with RTI or RTF on the other is that the existence of ROUT and ROUX plus either RTI or RTF will provide additional flexibility by allowing the Exchange to offer two System routing tables that can be paired with the applicable routing methodology. In order to allow a gradual migration from Parallel D and Parallel 2D to the proposed routing strategies (ROUT or ROUX plus RTI or RTF) the Exchange is not proposing to eliminate such routing strategies upon effectiveness of this proposal. Instead, the Exchange proposes to continue to accept orders designated for Parallel D and Parallel 2D routing and will eventually retire such routing strategies and remove reference to the routing strategies from Exchange rules once all affected Users have been migrated away from Parallel D and Parallel 2D to the new routing strategies. Further, adding the ROUT and ROUX routing strategies plus the RTI and RTF options as proposed will ensure

³ See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

⁴ See EDGA Rules 11.9(b)(2)(c), 11.9(b)(2)(d), 11.9(b)(2)(h), 11.9(b)(2)(i), 11.9(b)(2)(n); EDGX Rules

⁷ As set forth in Rule 11.13(a)(3), the term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them.

consistency with EDGA and EDGX with respect to the names used to describe the strategies.

The Exchange also proposes to add the Post to Away routing option, which will route the remainder of a routed order to and posts such order on the order book of a destination on the System routing table as specified by the User. The Post to Away routing option is an alternative to either cancelling a routed order back to a User or posting such order to the BATS Book to the extent an order is not completely filled through the routing process. The Post to Away routing option can be combined with the following routing strategies (each of which is separately described in this filing): ROUT, ROUX, ROUZ, INET, RDOT, RDOX and ROLF.

The Exchange also proposes to adopt four additional routing strategies under which an order checks the System for available shares and is sent to a specified destination. Although the Exchange currently has similar order routing options through the Destination Specific routing option, the Exchange is proposing certain additional functionality with the proposed routing strategies to match functionality offered by EDGA and EDGX. The Exchange also believes that retaining the same names for such routing options as are utilized by EDGA and EDGX will help to promote the integration of the BGM Affiliated Exchanges. These proposed routing strategies that are focused on particular destinations and/or particular functionality offered by such destinations are set forth below:

- **INET.** The Exchange proposes to add the INET routing option under which an order will check the System for available shares and then will be sent to Nasdaq. If shares remain unexecuted after routing through the INET routing option, they will be posted on the Nasdaq book, unless otherwise instructed by the User.

- **RDOT.** The Exchange proposes to add the RDOT routing option under which an order will check the System for available shares and then will be sent to destinations on the System routing table. If shares remain unexecuted after routing, they will be sent to NYSE and can be re-routed by the NYSE. If shares remain unexecuted after routing, they will be posted to the NYSE, unless otherwise instructed by the User.

- **RDOX.** The Exchange proposes to add the RDOX option under which an order will check the System for available shares, then will be sent to the NYSE and can be re-routed by the NYSE. If shares remain unexecuted after routing, they will be posted on the

NYSE book, unless otherwise instructed by the User.

- **ROLF.** The Exchange proposes to add the ROLF routing option under which an order will check the System for available shares and then will be sent to LavaFlow ECN. If shares remain unexecuted after routing they will be cancelled, unless otherwise instructed by the User.

The Exchange also proposes to add the ROOC routing option for orders that the entering User wishes to designate for participation in the opening, re-opening (following a halt, suspension, or pause), or closing process of a primary listing market (NYSE, Nasdaq, NYSE MKT, or NYSE Arca) if received before the opening/re-opening/closing time of such market. If shares remain unexecuted after attempting to execute in the opening, re-opening, or closing process, they will be posted to the BATS Book, executed, or routed to destinations on the System routing table.

In addition to the changes proposed above, the Exchange also proposes to re-number various existing paragraphs of Rule 11.13(a)(3) in connection with the addition of the proposed routing strategies. The Exchange also proposes to correct a typographical error in Rule 11.13(a)(3)(I), which describes SWP orders, by referencing Rule 11.18(e) instead of Rule 11.8(e) with respect to the Limit Up-Limit Down Plan.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act")⁸ and further the objectives of Section 6(b)(5) of the Act⁹ because they are designed 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)¹⁰ of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. In particular, the proposed change to introduce additional routing strategies will provide market participants with greater flexibility in routing orders consistent with Regulation NMS

without developing order routing strategies on their own.

As noted above, the proposed rule changes to add functionality are intended to add certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering for the BGM Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on BYX, EDGA and/or EDGX. The proposed rule changes would also provide Users with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. As explained elsewhere in this proposal, all of the proposed routing options are similar to routing strategies on other market centers, including EDGA and EDGX.

The Exchange also believes that re-locating certain routing options from Rule 11.9 to Rule 11.13 is consistent with the protection of investors and the public interest pursuant to the Act because such changes will enable those reviewing the Exchange's rules to more clearly understand such rules.

Finally, the Exchange believes that elimination of the Modified Destination Specific Order is consistent with the Act because such routing strategy is not currently offered by the Exchange because there are no currently approved destinations for such strategy. Thus, eliminating reference to such strategy will avoid confusion by market participants.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by self-regulatory organizations, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to the Exchange only if they offer investors higher quality and better value than services offered by others. The Exchange reiterates that the proposed rule change

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78k-1(a)(1).

is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve a consistent technology offering by the BGM Affiliated Exchanges.

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 Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the foregoing 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 is filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁴ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing, noting that a waiver of the operative delay will allow the Exchange to continue to strive towards a complete technology integration of the BGM Affiliated Exchanges, with gradual roll-outs of new functionality to ensure stability of the System. The Exchange also believes that the benefit to

Exchange Users expected from the proposed rule change—greater flexibility in their efforts to fill orders—should not be delayed. Further, the Exchange states that introduction of the optional routing strategies will not require any systems changes by Exchange Users that would necessitate a delay, as selection of the routing strategies is entirely optional and Users will not be affected by the change unless they select to use the newly offered functionality. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BATS-2014-052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-BATS-2014-052. 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, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2014-052, and should be submitted on or before November 19, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73414; File No. SR-BATS-2014-050]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

October 23, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 16, 2014, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") a 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6). 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.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.