

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61694; File No. SR-NYSE-2010-18)

March 11, 2010

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC to Amend the Bylaws of NYSE Euronext to Adopt a Majority Voting Standard in Uncontested Elections of Directors

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 March 5, 2010, New York Stock Exchange LLC (“NYSE” or the “Exchange”) 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 is submitting this rule filing in connection with the proposal of its ultimate parent, NYSE Euronext (the “Corporation”),³ to amend its bylaws (“Bylaws”) to replace the plurality vote standard for election of directors in uncontested elections that is currently in the Bylaws with a majority vote standard for such elections. The existing plurality vote standard will be retained in connection with contested elections for directors. The text of the proposed rule change is available at the Exchange, at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NYSE, a New York limited liability company, is an indirect wholly-owned subsidiary of NYSE Euronext.

Commission's Public Reference Room, and on the Exchange's website at www.nyse.com.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is submitting this rule filing in connection with the Corporation's proposal to amend its Bylaws to replace the plurality vote standard for election of directors in uncontested elections that is currently in the Bylaws with a majority vote standard for such elections. Specifically, the Bylaws currently provide that "directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors." Under the Corporation's corporate governance guidelines previously adopted by the Board, however, any director nominee in an uncontested election (being an election in which the number of nominees equals the number of directors to be elected) who receives a greater number of "withheld" votes than "for" votes (including any "against" votes if that option were to be made available on the proxy card) must immediately tender his or her

resignation from the Board. The Board will then decide, through a process managed by the Nominating and Governance Committee and excluding the nominee in question, whether to accept the resignation. In a contested election (being an election in which the number of nominees exceeds the number of directors to be elected), the unqualified plurality vote standard controls.

Uncontested Election

The Corporation is proposing to add an explicit majority voting provision for uncontested director elections to the Bylaws, thereby replacing the plurality vote standard for election of directors in such elections that is currently in the Bylaws. The existing plurality vote standard will be retained in connection with contested elections for directors. Under the proposed amendment to the Bylaws, the proxy card would change for an uncontested election, and the stockholders would be given the choice to vote “for,” “against” or “abstain” with respect to each director nominee individually.⁴ In such an election, each director would be elected by the vote of the majority of the votes cast with respect to such director’s election, meaning that the number of votes cast “for” such director’s election exceeded the number of votes cast “against” that director’s election (with “abstentions” not counted as a vote cast either “for” or “against” such director’s election). In the event that any incumbent director fails to receive a majority of the votes cast, such director would be required to tender his or her resignation to the Nominating and Governance Committee of the Board (or another committee designated by the Board), and such committee would make a recommendation to the Board as to whether to

⁴ Stockholders are currently given three choices when voting for a slate of director nominees: they can vote (1) “for” all nominees, (2) “withheld” for all nominees or (3) “withheld” for certain nominees and “for” the remaining nominees.

accept or reject such resignation or whether other action should be taken. The Board would then act on the recommendation of such committee and publicly disclose its decision regarding the tendered resignation and the rationale behind the decision.

The proposed amendment to the Bylaws also provides that a director who tenders his or her resignation as described above will not participate in the recommendation by the Nominating and Governance Committee or the Board of Directors action regarding whether to accept the tendered resignation. In the event that each member of the Nominating and Governance Committee fails to receive a majority of the votes cast in the same uncontested election, then the independent directors who received a majority of the votes cast in such election must appoint a committee among themselves to consider the tendered resignation and recommend to the Board whether to accept it. However, if the only directors who received a majority of the votes cast in such election constitute three or fewer directors, all directors may participate in the action regarding whether to accept the tendered resignation.

Pursuant to the proposed amendment to the Bylaws, if the Board accepts a director's resignation as part of the process described above for uncontested elections, or if a nominee for director is not elected and the nominee is not an incumbent director, the Board may (i) fill the remaining vacancy as provided in Section 3.6 of the Bylaws and Article VI, Section 6 of the Certificate of Incorporation (involving a majority vote of the remaining directors then in office, though less than a quorum, or by the sole remaining director) or (ii) decrease the size of the Board as provided in Section 3.1 of the Bylaws and Article VI, Section 3 of the Certificate of Incorporation (involving adoption of a resolution by two-thirds of the directors then in office).

General Election Requirements

The following applies to elections of directors and is not being amended. Section 2.7 of the Bylaws provides that, unless otherwise provided in the Certificate of Incorporation of the Corporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder that has voting power upon the matter in question. This entitlement, however, is subject to the voting limitation in the Certificate of Incorporation that generally prohibits a beneficial owner, either alone or together with related parties, from voting or causing the voting of shares of stock of the corporation, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter. Any votes purported to be cast in excess of this limitation will be disregarded.⁵

Relative to the foregoing, if any beneficial owner of the Corporation's stock, either alone or together with related parties, is party to any agreement, plan or other arrangement with any other person or entity relating to shares of stock of the Corporation entitled to vote on any matter under circumstances in which (i) the result would be that shares of stock of the Corporation that would be subject to such agreement, plan or other arrangement would not be voted on any matter, or any proxy relating thereto would be withheld and (ii) the effect of the agreement, plan or arrangement would be to enable a beneficial owner (but for these provisions), either alone or together with related parties, to vote, possess the right to vote or cause the voting of shares of the Corporation's stock to exceed 10% of the then outstanding votes entitled to be cast (assuming that all shares

⁵ See NYSE Euronext Amended and Restated Certificate of Incorporation at Article V, Section 1(A).

of stock of the Corporation that are subject to the agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), then this recalculated 10% voting limitation will be applicable. Any votes purported to be cast in excess of this recalculated voting limitation will be disregarded.⁶

At each meeting of stockholders of the Corporation, except as otherwise provided by law or the Certificate of Incorporation of the Corporation, the holders of a majority of the voting power of the outstanding shares of stock of the Corporation entitled to vote on a matter at the meeting, present in person or represented by proxy, will constitute a quorum (it being understood that any shares in excess of the applicable voting limitation discussed above will not be counted as present at the meeting and will not be counted as outstanding shares of stock of the Corporation for purposes of determining whether there is a quorum, unless and only to the extent that such voting limitation shall have been duly waived as provided in the Certificate of Incorporation).⁷

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁸ of the Act, in general, and furthers the objectives of Section 6(b)(1)⁹ of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also

⁶ See id.

⁷ See NYSE Euronext Amended and Restated Certificate of Incorporation at Article VIII, Section 2.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(1).

consistent with, and furthers the objectives of, Section 6(b)(5)¹⁰ of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will protect investors and the public interest by codifying in the Bylaws the existing policy of the Corporation aimed at ensuring better corporate governance and accountability to stockholders by means of a voting procedure leading to election results that more accurately reflect the views of stockholders on the qualifications and suitability of individual director nominees, even if there are no alternative director nominees to vote for on the ballot.

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the Federal Register or

¹⁰ 15 U.S.C. 78f(b)(5).

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 NYSE consents, the Commission will:

- (A) by order approve 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 proposed rule change, as amended, 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. Please include File Number SR-NYSE-2010-18 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2010-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room 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-NYSE-2010-18, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).