

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63792; File No. SR-NYSE-2010-77)

January 28, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, in Connection with the Proposal of NYSE Euronext to Eliminate the Requirement of an 80% Supermajority Vote to Amend or Repeal Section 3.1 of its Bylaws

On November 30, 2010, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Bylaws of its parent corporation, NYSE Euronext (“Corporation”). On December 3, 2010, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the Federal Register on December 17, 2010.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

On behalf of the Corporation, NYSE proposed to amend the Corporation’s Bylaws to eliminate the requirement that the affirmative vote of the holders of not less than 80% of the votes entitled to be cast by the holders of the outstanding capital stock of the Corporation entitled to vote generally in the election of directors is necessary for the stockholders to amend or repeal Article III, Section 3.1 of the Bylaws relating to the general powers of the Board of Directors of the Corporation (“Board”). Section 3.1 provides that the number of directors on the Board shall be fixed and changed from time to time exclusively by the Board pursuant to a resolution adopted by two-thirds of the directors then in office. The Exchange stated that the elimination of

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

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

<sup>3</sup> See Securities Exchange Act Release No. 63532 (December 13, 2010), 75 FR 79060.

this 80% “supermajority” voting provision as it relates to Article III, Section 3.1 would have the effect that only a majority of the same number of votes entitled to be cast will be required to amend or repeal this section of the Corporation’s Bylaws. The Exchange noted that it believes that the proposed rule change will permit the Corporation to respond to a stockholder proposal requesting that the Corporation implement a simple majority voting standard to amend its Certificate of Incorporation and Bylaws.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>5</sup> which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply and to enforce compliance by its members and persons associated with its members with the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change to amend the Corporation’s Bylaws to eliminate the 80% supermajority requirement to amend or repeal Article III, Section

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<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78(b)(1).

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

3.1 of the Bylaws in favor of a simple majority vote standard is consistent with the Act. The Commission believes that the proposed rule change is designed to allow changes to Article III, Section 3.1 of the Corporation's Bylaws to be made in a manner that reflects the desires of the Corporation's shareholders.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2010-77), as modified by Amendment No. 1, be, and it hereby is, approved.

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

Elizabeth M. Murphy  
Secretary

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