

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68959; File No. SR-NYSEArca-2013-17)

February 20, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Its Rules to Reflect the Merger of NYSE Arca Holdings, Inc., An Intermediate Holding Company, Into and With NYSE Group, Inc., Thereby Eliminating NYSE Arca Holdings, Inc. From the Ownership Structure of The Exchange

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 7, 2013, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 proposes to amend its rules to reflect the merger of NYSE Arca Holdings, Inc. (“NYSE Arca Holdings”), an intermediate holding company, into and with NYSE Group, Inc. (“NYSE Group”), thereby eliminating NYSE Arca Holdings from the ownership structure of the Exchange. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.-

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

---

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 those 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to reflect the merger of NYSE Arca Holdings, an intermediate holding company, into and with NYSE Group, thereby eliminating NYSE Arca Holdings from the ownership structure of the Exchange.

Currently, NYSE Arca Holdings owns 100% of the equity interest of the Exchange. NYSE Group owns 100% of the equity interest of NYSE Arca Holdings, as well as 100% of the equity interest of NYSE Arca’s affiliates, New York Stock Exchange LLC (“NYSE”) and NYSE MKT, LLC (“NYSE MKT”). NYSE Euronext owns 100% of the equity interest of NYSE Group.

NYSE Euronext intends to merge NYSE Arca Holdings with and into NYSE Group, effective following approval of this proposed rule change. The reason for the merger is to eliminate an unnecessary intermediate holding company. Following the merger, the Exchange would be 100% owned by NYSE Group (as its two affiliate exchanges, NYSE and NYSE MKT, are), and NYSE Group would continue to be 100% owned by NYSE Euronext.

Article 9 of the Second Amended and Restated Certificate of Incorporation of NYSE Arca Holdings, Inc. (“NYSE Arca Holdings Certificate”) imposes certain ownership and voting restrictions on the shares of NYSE Arca Holdings for so long as it directly or indirectly controls the Exchange. In addition, Section 3.15 of the Amended and Restated NYSE Arca Holdings,

Inc. Bylaws (“NYSE Arca Holdings Bylaws”) provides that for so long as NYSE Arca Holdings controls the Exchange, the Board of Directors, officers, employees and agents of NYSE Arca Holdings shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and all books and records of the Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchange shall be retained in confidence and not be used for any non-regulatory purposes. Pursuant to Section 7.04 of the NYSE Arca Holdings Bylaws, NYSE Arca Holdings and its officers, directors, employees, and agents are subject to the jurisdiction of the Securities and Exchange Commission (the “Commission”).

NYSE Group’s Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc. (“NYSE Group Certificate”) already contains comparable provisions. Under Article IV, Section 4(b) of the NYSE Group Certificate, similar ownership and voting restrictions apply to shares of NYSE Group to the extent that the Exchange and NYSE Arca Equities, Inc. (“NYSE Arca Equities”), its wholly owned subsidiary, continue to be controlled directly or indirectly by NYSE Group. In addition, Article XI, Section 3 of the NYSE Group Certificate provides that NYSE Group and its directors, officers, and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and NYSE Arca Equities. Under Article X of the NYSE Group Certificate, NYSE Group’s books and records relating to the Exchange and NYSE Arca Equities must be maintained within the United States and all confidential information in such books and records must be retained in confidence,<sup>4</sup> and under

---

<sup>4</sup> In addition, Section 6.04 of the NYSE Arca Bylaws requires that all books and records of the Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices, and audit information) must be retained in confidence by the Exchange and its personnel and may not be used by the Exchange for any non-regulatory purposes

Article IX of the NYSE Group Certificate, NYSE Group’s directors and officers already are subject to the jurisdiction of the Commission.

Thus, the Exchange proposes to delete in its entirety the text of the NYSE Arca Holdings Certificate and the NYSE Arca Holdings Bylaws.<sup>5</sup> The Exchange also proposes conforming amendments to its rules and the NYSE Arca Bylaws. First, the Exchange proposes to delete the heading for and text of NYSE Arca Rule 1.1(ff), which provides a definition of NYSE Arca Holdings, and mark it “Reserved.”<sup>6</sup>

Second, the Exchange proposes to amend Section 2.01 of the NYSE Arca Bylaws, which describes the Exchange as a non-stock corporation with one member, NYSE Arca Holdings, which is defined as the “Holding Member.” Section 2.01 would be amended to replace the reference to NYSE Arca Holdings with a reference to NYSE Group, thus designating it as the Holding Member for purposes of the NYSE Arca Bylaws.

Third, certain other references to “Holding Member” in the NYSE Arca Bylaws would be amended. Sections 2.02, 2.04, and 2.05 of the NYSE Arca Bylaws set forth provisions for

---

and may not be made available to any persons (including, without limitation, any members of the Exchange) other than to those personnel of the Exchange and to members of the Board of Directors of the Exchange to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange.

<sup>5</sup> Article 9, Section 1(b)(i)(B) of the NYSE Arca Holdings Certificate provides that for so long as NYSE Arca Holdings directly or indirectly controls the Exchange, no Person either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially shares of the capital stock (whether common or preferred stock) of NYSE Arca Holdings constituting more than 40% of the outstanding shares of any class of capital stock of NYSE Arca Holdings unless the Board of Directors of NYSE Arca Holdings has adopted an amendment to the NYSE Arca Holdings Bylaws waiving such a restriction. Such an amendment was already adopted with respect to NYSE Group in connection with an earlier merger of an intermediate holding company. See Securities Exchange Act Release 67435 (July 13, 2012), 77 FR 42533 (July 19, 2012) (SR-NYSE 2012-45).

<sup>6</sup> The Exchange also proposes to remove the unnecessary heading for the term “Related Person,” which was deleted by SR-NYSE-2012-45. See supra note 5.

scheduling meetings of the Holding Member and the presiding officer and secretary for such meetings. Articles II and III of the Second Amended and Restated Bylaws of NYSE Group include provisions for meetings of NYSE Group’s stockholders and Board of Directors, respectively. The operating agreements of the Exchange’s affiliates, NYSE and NYSE MKT, do not contain provisions relating to annual meetings of NYSE Group.<sup>7</sup> As such, the text of Sections 2.02, 2.04, and 2.05 of the NYSE Arca Bylaws is unnecessary and would be deleted and those sections would be marked “Reserved.”

Section 3.02(f) of the NYSE Arca Bylaws provides that, except as otherwise provided in the NYSE Arca Bylaws or rules, the Nominating Committee of NYSE Arca Holdings shall nominate directors for election at the annual meeting of the Holding Member. NYSE Arca Rule 3.2 sets forth a detailed process for the nomination and selection of fair representation directors for the NYSE Arca Board of Directors, and NYSE Arca Equities Rule 3.2 sets forth a similar process for the nomination and selection of fair representation directors for the NYSE Arca Equities Board of Directors.<sup>8</sup> The NYSE Arca Bylaws and rules do not have any other provisions concerning the nomination of non-fair representation directors. As such, the Exchange proposes to amend Section 3.02(f) of the NYSE Arca Bylaws to provide that except as otherwise provided in the NYSE Arca Bylaws or rules, the Holding Member shall nominate directors for election at the Holding Member’s annual meeting.<sup>9</sup> The proposed rule change thus

---

<sup>7</sup> The operating agreements are available at [https://usequities.nyx.com/sites/usequities.nyx.com/files/fourth\\_amended\\_and\\_restated\\_operating\\_agreement\\_of\\_nyse\\_llc.pdf](https://usequities.nyx.com/sites/usequities.nyx.com/files/fourth_amended_and_restated_operating_agreement_of_nyse_llc.pdf) and [http://wallstreet.cch.com/MKT/pdf/operating\\_agreement.pdf](http://wallstreet.cch.com/MKT/pdf/operating_agreement.pdf), respectively.

<sup>8</sup> See also Securities Exchange Act Release No. 67619 (August 8, 2012), 77 FR 49032 (August 15, 2012) (SR-NYSEArca-2012-67).

<sup>9</sup> Article IV of the Second Amended and Restated Bylaws of NYSE Group (“NYSE Group Bylaws”) does not specifically provide for a Nominating Committee. The NYSE Group Bylaws are available at

would not have any impact on the process for the nomination and selection of fair representation directors.

Finally, Section 3.13 of the NYSE Arca Bylaws provides that no member of the Board of Directors of NYSE Arca Holdings who is not also a member of the Board of Directors of the Exchange, and no officer, staff, counsel or other advisor of NYSE Arca Holdings who is not also an officer, staff, counsel or advisor of the Exchange, may participate in any meetings of the Exchange's Board of Directors (or any committees thereof) pertaining to the Exchange's self-regulatory function (including disciplinary matters) or relating to the structure of the market which the Exchange regulates. The references to NYSE Arca Holdings would be replaced with references to NYSE Group.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change would result in the Exchange's rules correctly reflecting its ownership structure without having any substantive impact on the Exchange's rules, including those concerning the voting and ownership restrictions that currently apply to the Exchange and its affiliates.

---

<http://usequities.nyx.com/sites/corporate.nyx.com/files/amendedandrestatedbylawsofnysegroup.pdf>.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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. The proposed rule change is not designed to address any competitive issue or have any impact on competition; rather, it is intended solely to eliminate an unnecessary intermediate holding company from the ownership structure of the Exchange.

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 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 self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the 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 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 Number SR-NYSEArca-

2013-17 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-NYSEArca-2013-17. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE, Washington, DC 20549-1090. Copies of the 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 Number SR- NYSEArca-2013-17 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.<sup>12</sup>

Kevin M. O'Neill  
Deputy Secretary

---

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