

SECURITIES AND EXCHANGE COMMISSION  
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June 25, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in which Its Indirect Parent, NYSE Euronext, Will Become a Wholly Owned Subsidiary of IntercontinentalExchange Group, Inc.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Exchange Act” or the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 14, 2013, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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

A. Overview of the Proposed Merger

The Exchange, a New York limited liability company, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the “Proposed Rule Change”) to the U.S. Securities and Exchange Commission in connection with the proposed business combination (the “Merger”) of NYSE Euronext (“NYSE Euronext”) and IntercontinentalExchange, Inc. (“ICE”), both Delaware corporations. NYSE Euronext has entered into an Agreement and Plan of Merger, dated as of December 20, 2012, as amended and restated as of March 19, 2013, by and among NYSE Euronext, ICE, IntercontinentalExchange

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<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.

Group, Inc. (“ICE Group”), Braves Merger Sub, Inc. (“ICE Merger Sub”) and Baseball Merger Sub, LLC (“NYSE Euronext Merger Sub”) (as it may be further amended from time to time, the “Merger Agreement”), whereby NYSE Euronext and ICE would each become subsidiaries of ICE Group.

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (“NYSE Group”), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the “NYSE Exchanges”) – the Exchange, NYSE Arca, Inc. (“NYSE Arca”) and NYSE MKT LLC (“NYSE MKT”) – and (2) 100% of the equity interest of NYSE Market (DE), Inc. (“NYSE Market”), NYSE Regulation, Inc. (“NYSE Regulation”), NYSE Arca L.L.C., NYSE Arca Equities, Inc. (“NYSE Arca Equities”) and NYSE Amex Options LLC (“NYSE Amex Options”) (the NYSE Exchanges, together with (x) NYSE Market, NYSE Regulation, NYSE Arca L.L.C., NYSE Arca Equities and NYSE Amex Options and (y) any similar U.S. regulated entity acquired, owned or created after the date hereof, the “U.S. Regulated Subsidiaries” and each, a “U.S. Regulated Subsidiary”). Each of NYSE Arca and NYSE MKT will be separately filing a proposed rule change in connection with the Merger that will be substantially the same as the Proposed Rule Change.

ICE is a leading operator of regulated exchanges and clearing houses serving the risk management needs of global markets for agricultural, credit, currency, emissions, energy and equity index products. ICE directly and indirectly owns ICE Futures Europe, ICE Futures U.S., Inc., ICE Futures Canada, Inc., ICE U.S. OTC Commodity Markets, LLC, and five central counterparty clearing houses, including ICE Clear Europe Limited and ICE Clear Credit LLC,

each of which is registered as a clearing agency under Section 17A of the Exchange Act,<sup>4</sup> ICE Clear U.S., Inc., ICE Clear Canada, Inc., and The Clearing Corporation, and owns 100% of the equity in Creditex Group Inc., which in turn indirectly owns Creditex Securities Corporation. Neither ICE nor any company owned by it directly or indirectly, including, but not limited to, those referenced in this paragraph, is a registered national securities exchange or a member of any U.S. Regulated Subsidiary.

ICE's common stock is listed on the Exchange under the symbol "ICE," and, following the completion of the Merger, ICE Group common stock is expected to be listed for trading on the Exchange under the same symbol.

**B. Summary of Proposed Rule Change**

The Exchange is proposing that, pursuant to the Merger, the successor to NYSE Euronext, the Exchange's indirect parent, will be a wholly owned subsidiary of ICE Group. ICE Group is currently a wholly owned subsidiary of ICE. ICE Group in turn has two wholly owned subsidiaries, ICE Merger Sub, a Delaware corporation, and NYSE Euronext Merger Sub, a Delaware limited liability company. To effect this transaction, (A) ICE Merger Sub will be merged with and into ICE (the "ICE Merger"), with ICE as the surviving corporation and a wholly owned subsidiary of ICE Group, and each share of ICE common stock owned by an ICE stockholder (other than ICE or ICE Merger Sub) will be converted into the right to receive one share of ICE Group common stock, and (B) immediately following the ICE Merger, NYSE Euronext shall be merged with and into NYSE Euronext Merger Sub, with NYSE Euronext Merger Sub as the surviving company and a wholly owned subsidiary of ICE Group (the "NYSE Euronext Merger" and, together with the ICE Merger, the "Merger"). Each issued and

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<sup>4</sup> 15 U.S.C. 78qA [sic].

outstanding share of NYSE Euronext common stock will be converted into the right to receive the “standard election amount” of 0.1703 of a share of ICE Group common stock and \$11.27 in cash, other than certain shares held by NYSE Euronext, ICE and their respective affiliates. Alternatively, NYSE Euronext stockholders will have the right to make either a cash election to receive \$33.12 in cash, or a stock election to receive 0.2581 of a share of ICE Group common stock, for each share of NYSE Euronext. NYSE Euronext Merger Sub, as the surviving entity in the NYSE Euronext Merger, will change its name to NYSE Euronext Holdings LLC (“NYX Holdings”) from and after the closing of the Merger.

If the Merger is completed, the businesses of ICE and NYSE Euronext, including the U.S. Regulated Subsidiaries, will be held under ICE Group as a single publicly traded holding company that will be listed on the Exchange. The Proposed Rule Change, if approved by the Commission, will not be effective until the consummation of the Merger.

In addition, the Exchange is proposing that, in connection with the Merger, the Commission approve the organizational and other governance documents of ICE Group and NYX Holdings, as well as certain amendments to the organizational and other governance documents of NYSE Group and certain of the U.S. Regulated Subsidiaries, as well as certain rules of the Exchange, NYSE MKT and NYSE Arca Equities.<sup>5</sup> The Proposed Rule Change is summarized as follows:

Certificate of Incorporation and Bylaws of ICE Group. ICE Group would take appropriate steps to incorporate voting and ownership restrictions, provisions relating to the

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<sup>5</sup> Proposed amendments to the governance documents and/or rules of NYSE MKT and NYSE Arca Equities are included in the Proposed Rule Change, and the text of those proposed amendments are attached as exhibits to the Proposed Rule Change, because they are part of the overall set of changes proposed by the NYSE Exchange to be made in connection with the Merger.

qualifications of directors and officers and their submission to jurisdiction, compliance with the Federal securities laws, access to books and records and other matters related to its control of the U.S. Regulated Subsidiaries. Specifically, the Amended and Restated Certificate of Incorporation of ICE Group (the “ICE Group Certificate”)<sup>6</sup> and the Amended and Restated Bylaws of ICE Group (the “ICE Group Bylaws”)<sup>7</sup> would contain provisions to incorporate these concepts with respect to itself, as well as its directors, officers, employees, and agents (as applicable):

- Voting and Ownership Restrictions in the ICE Group Certificate and Bylaws. The ICE Group Certificate would contain voting and ownership restrictions that will restrict any person, either alone or together with its related persons, from having voting control over ICE Group shares entitling the holder thereof to cast more than 10% of the then outstanding votes entitled to be cast on a matter or beneficially owning ICE Group shares representing more than 20% of the outstanding votes entitled to be cast on a matter. The ICE Group Certificate would provide that ICE Group will be required to disregard any votes purported to be cast in excess of the voting restriction. In the event that any person(s) exceeds the ownership restrictions, it will be obligated to sell promptly, and ICE Group is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of ICE Group necessary so that such person, together with its related persons, will beneficially own shares of ICE Group representing in the aggregate no more than 20% of the then outstanding votes

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<sup>6</sup> The text of the proposed ICE Group Certificate is attached to the Proposed Rule Change as Exhibit 5A.

<sup>7</sup> The text of the proposed ICE Group Bylaws is attached to the Proposed Rule Change as Exhibit 5B.

entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding. Consistent with the current Amended and Restated Certificate of Incorporation of NYSE Euronext (the “NYSE Euronext Certificate”), the ICE Group board of directors may waive the voting and ownership restrictions if it makes certain determinations (which will be subject to the same requirements as are currently required to be made by the board of directors of NYSE Euronext in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority. The ICE Group Certificate further provides that the board of directors may not approve either voting or ownership rights in excess of a 20% threshold with respect to any person that is a Member of the Exchange, as defined in the ICE Group Certificate (an “NYSE Member”), a Member of NYSE MKT as defined in the ICE Group Certificate (including any person who is a related person of such member, a “NYSE MKT Member”), an ETP Holder of NYSE Arca Equities, as defined in the ICE Group Certificate (an “ETP Holder”), or an OTP Holder or OTP Firm of NYSE Arca, as defined in the ICE Group Certificate (an “OTP Holder” and “OTP Firm,” respectively). This limitation is currently in the NYSE Euronext Certificate with respect to NYSE Members, ETP Holders, OTP Holders and OTP Firms, and in the Second Amended and Restated Bylaws of NYSE Euronext (the “NYSE Euronext

Bylaws”) with respect to NYSE MKT Members, including an expanded definition of “Related Persons” to address NYSE MKT Members in a manner that is substantively consistent with provisions currently located in the NYSE Rules.

- Jurisdiction. The ICE Group Bylaws will provide that ICE Group and its directors, and, to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, its officers, and those of its employees whose principal place of business and residence is outside the United States will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceedings pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the ICE Group Bylaws would provide that, so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The ICE Group Bylaws would provide that ICE Group will take reasonable steps necessary to cause its officers, directors and employees to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.
- Books and Records. The ICE Group Bylaws would provide that for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of ICE Group will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to

oversight pursuant to, the Exchange Act, and that ICE Group's books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, ICE Group's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, ICE Group may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.

- Restrictions on Amendments to ICE Group Certificate and Bylaws. The ICE Group Certificate would provide that before any amendment to the ICE Group Certificate may be effectuated, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective. The ICE Group Bylaws would include the same requirement.
- ICE Group Independence Policy. In addition, ICE Group will adopt a Director Independence Policy in the form attached to the Proposed Rule Change as Exhibit 5C (the "ICE Group Independence Policy"), which would be substantially identical to the current Independence Policy of the NYSE Euronext board of directors except for the change of the entity whose board of directors adopted the policy and nonsubstantive conforming changes.



- Additional Matters. The ICE Group Bylaws would include provisions regarding cooperation with the Commission and the U.S. Regulated Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function, preservation of the independence of the U.S. Regulated Subsidiaries' self-regulatory function, and directors' consideration of the effect of ICE Group's actions on the U.S. Regulated Subsidiaries' ability to carry out their respective responsibilities under the Exchange Act.

Proposed Approval of Waiver of Ownership and Voting Restrictions of NYSE Euronext.

The Amended and Restated Certificate of Incorporation of NYSE Euronext (the "NYSE Euronext Certificate") currently restricts any person, either alone or together with its related persons, from being entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially owning shares of stock of NYSE Euronext representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.<sup>8</sup> NYSE Euronext is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Euronext shares that are held in excess of the ownership restriction. The NYSE Euronext Certificate and the Amended and Restated Bylaws of NYSE Euronext (the "NYSE Euronext Bylaws") provide that the board of directors of NYSE Euronext may waive these voting and ownership restrictions if it makes certain determinations and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the U.S. Securities Exchange Act

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<sup>8</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2.

of 1934, as amended, and the rules promulgated thereunder,<sup>9</sup> and filed with, and approved by, each European Regulator (as defined in the NYSE Euronext Certificate) having appropriate jurisdiction and authority.<sup>10</sup> Acting pursuant to this waiver provision, the board of directors of NYSE Euronext has adopted the resolutions set forth in Exhibit 5D to the Proposed Rule Change (the “NYSE Euronext Resolutions”) in order to permit ICE Group to own and vote 100% of the outstanding common stock of NYX Holdings as of and after the NYSE Euronext Merger. The Exchange is requesting approval by the Commission of the NYSE Euronext Resolutions in order to allow the NYSE Euronext Merger to take place.

Changes to the NYSE Euronext Certificate and Bylaws. NYX Holdings, as a Delaware limited liability company, will operate pursuant to an operating agreement (the “NYX Holdings Operating Agreement”), a copy of which is attached to the Proposed Rule Change as Exhibit 5E. The NYX Holdings Operating Agreement will differ in certain respects from the current NYSE Euronext Certificate and Bylaws as a result of the different form of organization of NYX Holdings and as a result of the change from a public company to a wholly owned subsidiary.

- Proposed Voting and Ownership Restrictions of NYX Holdings. Because NYX Holdings, the surviving entity of the merger of NYSE Euronext into Merger Sub, would be a wholly owned subsidiary of ICE Group as a result of the NYSE Euronext Merger, the Exchange is proposing to adopt voting and ownership restrictions that will differ from those in the current NYSE Euronext Certificate, and would be consistent with the analogous provisions in the Second Amended and Restated Certificate of Incorporation of NYSE Group (the “NYSE Group Certificate”):

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<sup>9</sup> 15 U.S.C. 78s(b).

<sup>10</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2, and Amended and Restated Bylaws of NYSE Euronext, Section 10.12.

- first, the NYX Holdings Operating Agreement would provide that all of the issued and outstanding membership interests of NYX Holdings will be held by ICE Group, and that ICE Group may not transfer or assign any membership interests without approval by the Commission under the Exchange Act and the relevant European Regulators under the applicable European Exchange Regulations (as defined in the NYX Holdings Operating Agreement);<sup>11</sup>
- second, the NYX Holdings Operating Agreement would provide that the voting and ownership restrictions contained therein would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests of NYX Holdings and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary (as such terms are defined in the NYX Holdings Operating Agreement). The voting and ownership restrictions in the NYX Holdings Operating Agreement would otherwise mirror those in both the current NYSE Group Certificate and the proposed ICE Group Certificate: a 10% threshold for the voting restriction and an ownership restriction of 20%.<sup>12</sup>
- Proposed Amendments to Certain Public-Company-Related and Other Provisions of NYSE Euronext Organizational and Corporate Governance Documents. Under the Proposed Rule Change, and in light of the fact that NYX Holdings will be a wholly owned subsidiary of ICE Group following the completion of the Merger, the NYX Holdings Operating Agreement, though based in substantial part on the current NYSE

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<sup>11</sup> See NYX Holdings Operating Agreement, Article VII Sections 7.1 (ICE Group as sole member) and 7.2 (transfer restrictions).

<sup>12</sup> See NYSE Group Certificate, Article IV Section 4(b); and ICE Group Certificate, Article V.

Euronext Certificate and Bylaws, will reflect a simplified and more efficient governance and capital structure that is appropriate for a wholly owned subsidiary.

The NYX Holdings Operating Agreement also will include certain provisions that are analogous to provisions in the organizational documents of NYSE Group, which is a wholly owned subsidiary of NYSE Euronext, just as NYX Holdings will be a wholly owned subsidiary of ICE Group following completion of the Merger.

- Other. The NYX Holdings Operating Agreement will (a) include the provision, which is currently in the NYSE Euronext Bylaws, that requires the board of directors of NYSE Euronext to make certain determinations relating to NYSE MKT in order to waive the voting and ownership restrictions, (b) update the names of certain European regulatory authorities in the definitions of “Euronext College of Regulators” and “European Regulator” and the technical descriptions of regulated markets and entities in the definitions of “European Exchange Regulations,” “European Regulated Market” and “European Market Subsidiary” (as currently defined in the NYSE Euronext Bylaws and incorporated into the NYSE Euronext Certificate), and (c) expand the definition of “related Persons” to address NYSE MKT Members in a manner that is substantively consistent with provisions currently located in the NYSE Rules.

Proposed Amendments to Voting and Ownership Restrictions of NYSE Group. The NYSE Group Certificate currently provides that, if NYSE Euronext and the trust established pursuant to the Trust Agreement, dated as of April 4, 2007 and amended as of October 1, 2008, by and among NYSE Euronext, NYSE Group and other parties thereto (the “NYSE Trust Agreement”) do not hold 100% of the outstanding stock of NYSE Group, no person, either alone

or together with its related persons, may be entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially own shares of stock of NYSE Group representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.<sup>13</sup> NYSE Group is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Group shares which are held in excess of the ownership restriction.<sup>14</sup>

- Under the Proposed Rule Change, the voting and ownership restrictions in the NYSE Group Certificate would be amended to apply only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as defined in the NYSE Group Certificate); and expand the definition of “Related Persons” regarding NYSE MKT Members so that it is consistent with the language in the NYSE Rules, which language also will be incorporated in the ICE Group Certificate and the NYX Holdings Operating Agreement pursuant to the Proposed Rule Change.

Other Proposed Amendments to NYSE Group Certificate. Under the Proposed Rule change, the NYSE Group Certificate also would be amended to make certain clarifications and technical edits (for example, to conform the use of defined terms and other provisions to be consistent with the other amendments to the NYSE Group Certificate set forth in the Proposed Rule Change).

Proposed Amendments to constituent documents of the Exchange, NYSE MKT, NYSE Market and NYSE Regulation. Under the Proposed Rule Change, certain conforming changes will be made to the Fourth Amended and Restated Operating Agreement, dated as of August 23, 2012, of the Exchange (the “Exchange Operating Agreement”) to reflect that certain nominations

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<sup>13</sup> See NYSE Group Certificate, Article IV Section 4(b)(1) and (2).

<sup>14</sup> See NYSE Group Certificate, Article IV Sections 4(b)(1)(A) and 4(b)(2)(D).

to the Board will be made by ICE Group rather than by NYSE Euronext. Substantially the same revisions would be made to the analogous provisions of the Third Amended and Restated Operating Agreement of NYSE MKT, the Second Amended and Restated Bylaws of NYSE Market and the Fourth Amended and Restated Bylaws of NYSE Regulation.

Proposed Amendments to the Exchange Rules, NYSE MKT Rules, and NYSE Arca Equities Rules. Under the Proposed Rule Change, certain technical amendments would be made to the Exchange Rules, including replacing references to “NYSE Euronext” with references to ICE Group, and deleting definitions of “member” and “member organization” relating to NYSE MKT, which are currently set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the current NYSE Euronext Certificate, because under the Proposed Rule Change, the ICE Group Certificate will incorporate this language. In addition, certain technical amendments would be made to the NYSE MKT Rules and NYSE Arca Equities Rules to replace references to “NYSE Euronext” with references to ICE Group.

The Second Amended and Restated Certificate of Incorporation of IntercontinentalExchange Group, Inc. that will be effective as of the consummation of the Merger, the Amended and Restated Bylaws of IntercontinentalExchange Group, Inc. that will be effective as of the consummation of the Merger; the proposed Director Independence Policy of Intercontinental-Exchange Group, Inc. that will be adopted by the board of directors of IntercontinentalExchange Group, Inc. effective as of the consummation of the Merger; the resolutions of the NYSE Euronext Board of Directors; the proposed Amended and Restated Limited Liability Company Agreement of NYSE Euronext Holdings LLC that will be effective as of the consummation of the Merger; the proposed Third Amended and Restated Certificate of Incorporation of NYSE Group, Inc. that will be effective as of the consummation of the Merger;

the proposed Fifth Amended and Restated Operating Agreement of New York Stock Exchange LLC that will be effective as of the consummation of the Merger; the proposed Fourth Amended and Restated Operating Agreement of NYSE MKT LLC that will be effective as of the consummation of the Merger; the proposed Third Amended and Restated Bylaws of NYSE Market (DE), Inc. that will be effective as of the consummation of the Merger; the proposed Fifth Amended and Restated Bylaws of NYSE Regulation, Inc. that will be effective as of the consummation of the Merger; the proposed amended Rules of the New York Stock Exchange, LLC that will be effective as of the consummation of the Merger; the proposed revised Director Independence Policy that will be adopted by the boards of directors of New York Stock Exchange, LLC, NYSE MKT LLC, NYSE Market (DE), Inc. and NYSE Regulation, Inc. effective as of the consummation of the Merger; the proposed amendments to the NYSE Trust Agreement, that will be effective as of the consummation of the Merger; the proposed amended Rules of NYSE MKT that will be effective as of the consummation of the Merger; and the proposed amended Rules of NYSE Arca Equities, Inc. that will be effective as of the consummation of the Merger are attached to the Proposed Rule Change as Exhibits 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5L, 5M, 5N and 5O, respectively.

The text of the Proposed Rule Change is available at the Exchange, the Commission's Public Reference Room, and on the website of the Exchange ([www.nyse.com](http://www.nyse.com)). The text of Exhibits 5A through 5O to the Proposed Rule Change is also available on the Exchange's website and on the Commission's website ([www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)).

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 has included statements concerning the purpose of, and basis for, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to adopt the rules necessary to permit NYSE Euronext to effect the Merger and to amend certain provisions of the organizational and other governance documents of NYSE Euronext, NYSE Group and certain of the U.S. Regulated Subsidiaries, including certain Exchange Rules, NYSE MKT Rules and NYSE Arca Equities Rules.

**1. Overview of the Merger**

The Exchange is submitting the Proposed Rule Change to the Commission in connection with the Merger of NYSE Euronext and ICE. ICE Group believes the Merger brings together two highly complementary businesses and will create an end-to-end multi-asset portfolio that will be strongly positioned to serve a global client base and capture current and future growth opportunities.

Other than as described herein and in the separate proposed rule changes filed by each NYSE Exchange, ICE Group and the NYSE Exchanges do not plan to make any changes to the regulated activities of the U.S. Regulated Subsidiaries in connection with the Merger. If ICE Group determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be effective until the consummation of the Merger.

The Merger will occur pursuant to the terms of the Merger Agreement. As a result of the Merger, NYX Holdings, the successor to NYSE Euronext, will be a subsidiary of ICE Group.



In the Merger, NYSE Euronext, the indirect parent of the Exchange, will become a wholly owned subsidiary of ICE Group. ICE Group is currently a wholly owned subsidiary of ICE. ICE Group in turn has two wholly owned subsidiaries, ICE Merger Sub and NYSE Euronext Merger Sub. ICE Merger Sub will be merged with and into ICE, with ICE as the surviving corporation and a wholly owned subsidiary of ICE Group. Immediately afterward, NYSE Euronext will be merged with and into NYSE Euronext Merger Sub, with NYSE Euronext Merger Sub as the surviving company and a wholly owned subsidiary of ICE Group. The surviving entity in the NYSE Euronext Merger will change its name to NYSE Euronext Holdings LLC from and after the closing of the NYSE Euronext Merger.

Under the terms of the Merger Agreement, each share of NYSE Euronext common stock will be converted into 0.1703 of a newly issued share of ICE Group common stock and \$11.27 cash (together, the “Standard Merger Consideration”). NYSE Euronext stockholders may also elect to receive \$33.12 in cash, or a stock election to receive 0.2851 of a share of ICE Group common stock, for each of their NYSE Euronext shares. Both the cash election and the stock election are subject to proration and adjustment procedures to ensure that the total amount of cash paid, and the total number of shares of ICE Group common stock issued, in the NYSE Euronext Merger to the NYSE Euronext stockholders, as a whole, will be equal to the total amount of cash and number of shares that would have been paid and issued if all of the NYSE Euronext stockholders received the standard election amount. Following the Merger, ICE Group common shares are expected to be listed on the New York Stock Exchange.

The board of directors of ICE has determined that the Merger is in the best interests of its stockholders, approved the Merger Agreement and resolved to recommend to its stockholders that they approve the adoption of the Merger Agreement. The board of directors of NYSE

Euronext has determined that the Merger is in the best interests of its stockholders, approved the Merger Agreement and resolved to recommend that its stockholders approve the adoption of the Merger Agreement.

## **2. Overview of ICE Group Following the Merger**

Following the Merger, ICE Group will be a for-profit, publicly traded Delaware corporation. ICE Group will hold all of the equity interests in ICE, which will continue its current operations, and in NYX Holdings, which will hold (1) 100% of the equity interests of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests in certain regulated trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom).

ICE Group will amend its certificate and bylaws to incorporate ownership and voting limitations and certain other provisions to satisfy U.S. and European regulatory requirements as described in detail in the Proposed Rule Change.

After the Merger, NYSE Group will be directly wholly owned by NYX Holdings and will continue to own, directly or indirectly, the three NYSE Exchanges – the Exchange, NYSE Arca and NYSE MKT – which provide marketplaces where investors buy and sell listed companies' common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE Regulation, Inc., an indirect not-for-profit subsidiary of NYX Holdings, will continue to oversee FINRA's performance of certain market surveillance and enforcement functions for the NYSE Exchanges, enforce listed company compliance with applicable standards, and oversee regulatory policy determinations, rule interpretation and regulation related rule development.

In Europe, NYSE Euronext and its subsidiaries own European-based exchanges that comprise Euronext N.V. and its subsidiaries—the London, Paris, Amsterdam, Brussels and Lisbon stock exchanges, as well as the derivatives markets in London, Paris, Amsterdam, Brussels and Lisbon (with certain qualifications and exceptions set forth in the ICE Group Bylaws, the “European Market Subsidiaries”). The activities of the NYSE Euronext European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (Autorité des Marchés Financiers), the French Authority of Prudential Control (Autorité de Contrôle Prudentiel), the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten), the Belgian Financial Services and Markets Authority (Autorité des services et marchés financiers), the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários – CMVM) and the U.K. Financial Conduct Authority (FCA).

NYSE Euronext and ICE expect that, after the closing of the Merger, Euronext will be separated from ICE Group, although no definitive plans have been made to pursue such a separation. An initial public offering of Euronext would include all of the European Market Subsidiaries (the continental European cash equity platforms and the derivatives traded on them) but would not include the derivatives businesses of another current subsidiary of Euronext, Liffe Administration and Management (“LAM”). ICE has informed NYSE Euronext that it expects the derivatives business of LAM will be gradually transitioned to ICE Futures Europe, subject to regulatory approval in the United Kingdom.

The current NYSE Euronext Certificate and Bylaws provide that each provision related to any European Market Subsidiary or any European regulatory requirement will be automatically

repealed if (i) NYSE Euronext at any time in the future no longer holds a direct or indirect “controlling interest” (as defined therein) in Euronext or (ii) a “Euronext Call Option” (as defined in the NYSE Euronext bylaws) has been exercised and, after a period of six months following such exercise, Stichting NYSE Euronext, a foundation (“stichting”) organized under the laws of The Netherlands, formed on April 4, 2007 (the “Foundation”) holds shares of Euronext that represent a substantial portion of Euronext’s business (provided that, in this case, the NYSE Euronext board of directors approves the applicable revocation). The ICE Group Certificate and Bylaws would contain similar provisions, except that the standard in clause (i) above that ICE Group no longer holds a direct or indirect controlling interest in Euronext would be replaced by a standard that it ceases to control Euronext, with “control” defined by reference to International Financial Reporting Standards. The separation of Euronext as described above is expected to trigger the repeal described in clause (i) as so modified.

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of each U.S. Regulated Subsidiary will be preserved. Specifically, after the Merger, NYSE Group’s businesses and assets will continue to be structured as follows:

- The Exchange will remain a direct wholly owned subsidiary of NYSE Group and an indirect wholly owned subsidiary of NYX Holdings.
- NYSE Market will remain a wholly owned subsidiary of the Exchange and will continue to conduct the Exchange’s business.
- NYSE Regulation will remain a wholly owned subsidiary of the Exchange and continue to perform, and/or oversee the performance of, regulatory responsibilities of the Exchange pursuant to a delegation agreement with the Exchange and regulatory

functions of NYSE Arca and NYSE MKT pursuant to services agreements with them.<sup>15</sup>

- NYSE Arca and NYSE Arca L.L.C., a Delaware limited liability company, will remain wholly owned subsidiaries of NYSE Group.
- NYSE Arca Equities will remain a wholly owned subsidiary of NYSE Arca.
- NYSE MKT will remain a direct wholly owned subsidiary of NYSE Group and an indirect wholly owned subsidiary of NYX Holdings.
- The Merger will have no effect on the ability of any party to trade securities on the Exchange, NYSE Arca or NYSE MKT.

Similarly, NYX Holdings, as successor to NYSE Euronext, and its subsidiaries will conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European Regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

ICE Group acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, NYSE Arca or NYSE MKT, it will be responsible for referring such possible violations to each such exchange, respectively. In addition, ICE Group will enter into an agreement with NYSE Regulation acknowledging that each of the Exchange, NYSE MKT and NYSE Arca has contracted to have NYSE Regulation perform its self-regulatory obligations, in each case with the self-regulatory organization retaining its responsibility for the adequate performance of those regulatory obligations, and agreeing to provide adequate funding to NYSE Regulation to allow NYSE Regulation to conduct its regulatory activities with respect to the Exchange, NYSE MKT and NYSE Arca.

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<sup>15</sup> Certain regulatory functions have been allocated to, and/or are otherwise performed by, FINRA.

### **3. Proposed Approval of Waiver of Voting and Ownership Restrictions of NYSE Euronext**

Article V of the current NYSE Euronext Certificate provides that (1) no person, either alone or together with its “related persons” (as defined in the NYSE Euronext Certificate), may be entitled to vote or cause the voting of shares of NYSE Euronext beneficially owned by such person or its related persons, 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; and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of NYSE Euronext (the “NYSE Euronext Voting Restriction”).<sup>16</sup> NYSE Euronext must disregard any votes purported to be cast in excess of the NYSE Euronext Voting Restriction.<sup>17</sup>

In addition, the NYSE Euronext Certificate provides that no person, either alone or together with its related persons, may at any time beneficially own shares of NYSE Euronext representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the “NYSE Euronext Ownership Restriction”).<sup>18</sup> If any person, either alone or together with its related persons, owns shares of NYSE Euronext in excess of the NYSE Euronext Ownership Restriction, then such person and its related persons are obligated to sell promptly, and NYSE Euronext is obligated to purchase promptly, at a price equal to the par

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<sup>16</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1.

<sup>17</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1(A).

<sup>18</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2.

value of such shares and to the extent funds are legally available for such purchase, the number of shares of NYSE Euronext necessary so that such person, together with its related persons, will beneficially own shares of NYSE Euronext representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.<sup>19</sup>

The NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction are applicable to each person unless and until (1) such person has delivered a notice in writing to the board of directors of NYSE Euronext, not less than 45 days (or such shorter period as the board of directors of NYSE Euronext expressly permits) prior to any vote or, in the case of the NYSE Euronext Ownership Restriction, prior to the acquisition of any shares of NYSE Euronext that would cause such person, either alone or together with its related persons, to exceed the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of NYSE Euronext stock beneficially owned by such person or its related persons in excess of the NYSE Euronext Voting Restriction, or in the case of the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of NYSE Euronext has resolved to expressly permit such voting or ownership, as applicable; (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>20</sup> and has become effective thereunder; and (4) such resolution has been filed with, and approved by, each European Regulator having appropriate jurisdiction and authority.

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<sup>19</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2(D).

<sup>20</sup> 15 U.S.C. 78s(b).

Subject to its fiduciary duties under applicable law, the NYSE Euronext board of directors may not adopt any resolution pursuant to clause (2) unless it has determined that the exercise of such voting rights (or the entering into of a voting agreement) or ownership, as applicable:

- will not impair the ability of any U.S. Regulated Subsidiary, NYSE Euronext or NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity) to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder;
- will not impair the ability of any of the European Market Subsidiaries of NYSE Euronext or Euronext (to the extent that Euronext continues to exist as a separate entity) to discharge their respective responsibilities under the European Exchange Regulations (as defined in the NYSE Euronext Bylaws);
- is otherwise in the best interest of NYSE Euronext, its stockholders, the U.S. Regulated Subsidiaries and the European Market Subsidiaries, and will not impair the Commission's ability to enforce the Exchange Act or the European Regulators' ability to enforce the European Exchange Regulations;
- for so long as NYSE Euronext directly or indirectly controls the Exchange or NYSE Market, neither such person nor any of its related persons is a NYSE Member;
- for so long as NYSE Euronext directly or indirectly controls NYSE MKT, neither such person nor any of its related persons is a NYSE MKT Member (this restriction is currently set forth in the Bylaws of NYSE Euronext<sup>21</sup>);

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<sup>21</sup> See NYSE Euronext Bylaws, Section 10.12.



- for so long as NYSE Euronext directly or indirectly controls NYSE Arca, NYSE Arca Equities or any facility of NYSE Arca, neither such person nor any of its related persons is an ETP Holder, an OTP Holder or an OTP Firm; and
- neither such person nor any of its related persons is a U.S. Disqualified Person or a European Disqualified Person (as such terms are defined in the NYSE Euronext Certificate).<sup>22</sup>

In order to allow ICE Group to wholly own and vote all of the outstanding common stock of NYSE Euronext upon consummation of the Merger, ICE Group has delivered written notice to the board of directors of NYSE Euronext pursuant to the procedures set forth in the NYSE Euronext Certificate requesting approval of its voting and ownership of NYSE Euronext shares in excess of the NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction. Among other things, in this notice, ICE Group represented to the board of directors of NYSE Euronext that neither it, nor any of its related persons, is (1) an NYSE Member; (2) an NYSE MKT Member; (3) an ETP Holder; (4) an OTP Holder or OTP Firm; or (5) a U.S. Disqualified Person or a European Disqualified Person.

On [June 5] [sic], 2013, the board of directors of NYSE Euronext adopted by written consent the NYSE Euronext Resolutions to permit ICE Group, either alone or with its related persons, to exceed the NYSE Euronext Ownership Restriction and the NYSE Euronext Voting Restriction. In adopting such resolutions, the board of directors of NYSE Euronext made the necessary determinations set forth above and approved the submission of the Proposed Rule Change to the Commission. The U.S. Regulated Subsidiaries will continue to operate and regulate their markets and members exactly as they have done prior to the Merger. Except as set

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<sup>22</sup> See NYSE Euronext Certificate, Article V Sections 1(B), 1(C), 2(B) and 2(C).

forth in the Proposed Rule Change, ICE Group is not proposing any amendments to their trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the U.S. Regulated Subsidiaries after the Merger, the U.S. Regulated Subsidiaries will operate in the same manner following the Merger as they operate today. Thus, the Commission will continue to have plenary regulatory authority over the U.S. Regulated Subsidiaries, as is the case currently with these entities. As described in the following sections of this filing, the Exchange is proposing the adoption of the ICE Group Certificate and Bylaws by ICE Group, the NYX Holdings Operating Agreement by NYX Holdings as the surviving entity of the NYSE Euronext Merger, which are modeled in large part on the current NYSE Euronext Certificate and Bylaws (with adjustments discussed below), and a series of amendments to the NYSE Group Certificate, that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities, and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The NYSE Euronext board of directors also determined that ownership of NYSE Euronext by ICE Group is in the best interests of NYSE Euronext, its stockholders and the U.S. Regulated Subsidiaries.

An extract with the relevant provisions of the Euronext Resolutions is attached as Exhibit 5D to the Proposed Rule Change and can be found on the Exchange's website and the Commission's website.

The Exchange hereby requests that the Commission approve the NYSE Euronext Resolutions and allow ICE Group, either alone or with its related persons, to own and vote all of the outstanding common stock of NYSE Euronext upon and following the consummation of the Merger.

#### **4. Proposed Amendments to Ownership and Voting Restrictions After the Merger**

##### Overview

The Exchange is proposing that, effective as of the completion of the Merger, the ICE Group Certificate would contain voting and ownership restrictions that are substantially identical to those currently in the NYSE Euronext Certificate (except that they would apply only for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary), and would restrict any person, either alone or together with its related persons, from having voting control over ICE Group shares entitling the holder thereof to cause more than 10% of the votes entitled to be cast on any matter or beneficially owning ICE Group shares representing more than 20% of the outstanding votes that may be cast on any matter.

In addition, the Exchange is proposing that the Commission approve the NYX Holdings Operating Agreement, effective as of the consummation of the Merger, which would include voting and ownership provisions, as well as related waiver provisions, again substantially identical to those in the current NYSE Euronext Certificate and NYSE Euronext Bylaws, except that they would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests in NYX Holdings and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary.

### Voting and Ownership Restrictions in the ICE Group Certificate

Under the Proposed Rule Change, the ICE Group Certificate would provide that (1) no person, either alone or together with its related persons (as defined in the ICE Group Certificate), may be entitled to vote or cause the voting of shares of stock of ICE Group beneficially owned by such person or its related persons, 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, and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of ICE Group (the “ICE Group Voting Restriction”).<sup>23</sup> The ICE Group Certificate will require ICE Group to disregard any votes purported to be cast in excess of the ICE Group Voting Restriction.

In addition, the ownership restrictions in the ICE Group Certificate would provide that, if such restrictions apply, no person, either alone or together with its related persons, may at any time own beneficially shares of ICE Group representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the “ICE Group Ownership Restrictions”).<sup>24</sup> If any person, either alone or together with its related persons, owns shares of ICE Group in excess of the ICE Group Ownership Restriction, then such person and its related persons are obligated to sell promptly, and ICE Group is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of ICE Group necessary so that such person, together with its related persons, will beneficially own shares of ICE Group representing in the aggregate no more

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<sup>23</sup> See ICE Group Certificate, Article V Section A.

<sup>24</sup> See ICE Group Certificate, Article V Section B.

than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.<sup>25</sup>

The ICE Group Certificate would provide that the ICE Group Voting Restriction and the ICE Group Ownership Restriction would apply only for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary (as such term is defined in the ICE Group Certificate).

The ICE Group Voting Restriction applies to each person unless and until (1) such person has delivered a notice in writing to the board of directors of ICE Group, not less than 45 days (or such shorter period as the board of directors of ICE Group expressly permits) prior to any vote, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of ICE Group stock beneficially owned by such person or its related persons in excess of the ICE Group Voting Restriction; (2) the board of directors of ICE Group has resolved to expressly permit such voting; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>26</sup> and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority.<sup>27</sup> Subject to its fiduciary duties under applicable law, the ICE Group board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless the board has made certain determinations, which will be consistent with the determinations currently required to be made by the board of

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<sup>25</sup> See ICE Group Certificate, Article V Section B.4.

<sup>26</sup> 15 U.S.C. 78s(b).

<sup>27</sup> See ICE Group Certificate, Article V Section A.2.

directors of NYSE Euronext in connection with a waiver of the NYSE Euronext Voting Restriction (as discussed above).<sup>28</sup>

The ICE Group Ownership Restriction applies to each person unless and until (1) such person has delivered a notice in writing to the board of directors of ICE Group, not less than 45 days (or such shorter period as the board of directors of ICE Group expressly permits) prior to the acquisition of any shares of ICE Group that would cause such person, either alone or together with its related persons, to exceed the ICE Group Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of ICE Group has resolved to expressly permit such ownership; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>29</sup> and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority.<sup>30</sup> Subject to its fiduciary duties under applicable law, the ICE Group board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless the board has made certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext in connection with a waiver of the NYSE Euronext Ownership Restriction (as discussed above).<sup>31</sup>

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<sup>28</sup> See text accompanying notes 18-20 [sic] above. References to ICE Group would be added as appropriate in the context of a waiver of the ICE Group Voting Restriction. See ICE Group Certificate, Article V Section A.3.

<sup>29</sup> 15 U.S.C. 78s(b).

<sup>30</sup> See ICE Group Certificate, Article V Section B.2.

<sup>31</sup> See text accompanying notes 18-20 [sic] above. References to ICE Group would be added as appropriate in the context of a waiver of the ICE Group Ownership Restriction. See ICE Group Certificate, Article V Section B.3.

## Amendments to NYSE Euronext Voting and Ownership Restrictions

Under the Proposed Rule Change, the NYX Holdings Operating Agreement, although modeled substantially on the current NYSE Euronext Certificate and Bylaws, would reflect certain modifications from the analogous provisions in the NYSE Euronext Certificate and Bylaws, effective as of the Merger, to be consistent with the status of NYX Holdings as a wholly owned subsidiary of ICE Group and with provisions currently in the NYSE Group Certificate, and certain other changes to update the voting and ownership restrictions, in the following respects:

- The NYX Holdings Operating Agreement would provide that all issued and outstanding membership interests will be held by ICE Group, and that ICE Group may not transfer or assign any membership interests without approval by the Commission under the Exchange Act and the relevant European Regulators (as defined in the NYX Holdings Operating Agreement) under the applicable European Exchange Regulations (as defined in the NYSE Euronext Certificate).<sup>32</sup>
- The NYX Holdings Operating Agreements would provide that the NYX Holdings voting and ownership restrictions contained therein would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests of NYX Holdings,<sup>33</sup> and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary (as defined in the NYX Holdings Operating

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<sup>32</sup> The analogous provision in the NYSE Group Certificate is Article IV Section 4(a). See proposed NYX Holdings Operating Agreement, Article VII Sections 7.1 and 7.2.

<sup>33</sup> The analogous provision in the NYSE Group Certificate is Article IV, Section 4(b). See proposed NYX Holdings Operating Agreement, Article IX Section 9.1.

Agreement).<sup>34</sup>

- The definition of “Related Persons” would be expanded to provide that (1) in the case of a person that is a “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include the “member” (as defined in Section 3(a)(3)(A)(ii), (iii) or (iv) of the Exchange Act) with which such person is associated; and (2) in the case of any person that is a “member” (as defined in 3(a)(3)(A)(ii), (iii) or (iv) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include any “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such person.<sup>35</sup> A conforming change will be made in the NYSE Group Certificate, as discussed below.
- The mandatory repurchase of membership interests from a Person whose ownership represents in the aggregate more than 20% in interest of the interests entitled to vote on any matter would be at a price determined by reference to each incremental percentage ownership over 20% rather than at par value, specifically \$1,000 for each percent.<sup>36</sup>

#### Amendments to NYSE Group Voting and Ownership Restrictions

The voting restrictions contained in the current NYSE Group Certificate are substantially the same as those in the current NYSE Euronext Certificate described above, except that (i) the NYSE Group Certificate does not contain any references to European subsidiaries, markets or

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<sup>34</sup> The analogous provision in the NYSE Group Certificate is Article IV Sections (b)(1) and (2). See proposed NYX Holdings Operating Agreement, Article VII Section 7.2.

<sup>35</sup> See proposed NYX Holdings Operating Agreement, Article I Section 1.1 (definition of Related Persons, clauses xi and xii).

<sup>36</sup> See proposed NYX Holdings Operating Agreement, Article IX, Section 9.1(b)(4).



regulators, and (ii) the NYSE Group Certificate contains references to NYSE MKT members in its definition of “Related Person” that are not currently in NYSE Euronext.

The NYSE Group Certificate would be updated to provide that

- the NYSE Group Voting Restriction and the NYSE Group Ownership Restriction would apply only in the event that NYX Holdings does not own all of the issued and outstanding shares of NYSE Group<sup>37</sup> and only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as such term is defined in the NYSE Group Certificate).<sup>38</sup>
- The definition of “Related Persons” would be expanded to provide that (1) in the case of a person that is a “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include the “member” (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and (iii) of the Exchange Act, which are currently referenced in this provision of the NYSE Group Certificate) with which such person is associated; and (2) in the case of any person that is a “member” (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and (iii) of the Exchange Act, which are currently referenced in this provision of the NYSE Group Certificate) of NYSE MKT, such person’s “Related Persons” would include any “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such

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<sup>37</sup> NYSE Group Certificate, Article IV, Section 4(b).

<sup>38</sup> NYSE Group Certificate, Article IV, Sections 4(b)(1) and (2).

person.<sup>39</sup> This conforms the definition of Related Person to that in the ICE Group Certificate and the NYX Holdings Operating Agreement.

**5. Additional Matters to be Addressed in the ICE Group Certificate and Bylaws<sup>40</sup>**

Jurisdiction over Individuals

Under the Proposed Rule Change, the ICE Group Bylaws would provide that ICE Group and its directors, and, to the extent that they are involved in the activities of the U.S. Regulated Subsidiaries, ICE Group's officers and those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. The ICE Group Bylaws would also provide that, with respect to any such suit, action, or proceeding brought by the Commission, ICE Group and its directors, officers and employees would (1) be deemed to agree that ICE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceedings relating to ICE Group or any of its subsidiaries; and (2) be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceedings is improper, or that the

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<sup>39</sup> NYSE Group Certificate, Article IV, Sections 4(b)(1)(E)(vi) and (xii).

<sup>40</sup> The ICE Group Certificate and Bylaws will also set forth certain restrictions and requirements relating to ICE Group's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to ICE Group's U.S. Regulated Subsidiaries and U.S. regulatory matters.

subject matter thereof may not be enforced in or by the U.S. federal courts of the Commission.<sup>41</sup>

In addition, the ICE Group Bylaws would provide that, so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of ICE Group will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>42</sup>

The ICE Group Bylaws would provide that ICE Group will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of ICE Group to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.<sup>43</sup>

The Exchange anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, over each of whom the Commission has direct authority pursuant to Section 19(h)(4) of the Exchange Act.<sup>44</sup>

#### Access to Books and Records

Under the Proposed Rule Change, the ICE Group Bylaws would provide that for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of ICE Group will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>45</sup>

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<sup>41</sup> See ICE Group Bylaws, Section 7.1.

<sup>42</sup> See ICE Group Bylaws, Section 8.4.

<sup>43</sup> See ICE Group Bylaws, Section 9.3.

<sup>44</sup> 15 U.S.C. 78s(h)(4).

<sup>45</sup> See ICE Group Bylaws, Section 8.4.

In addition, ICE's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, ICE Group may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.<sup>46</sup> The ICE Group Bylaws also would provide that ICE's books and records will at all times be made available for inspection and copying by the Commission, and any U.S. Regulated Subsidiary to the extent they are related to the activities of the U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.<sup>47</sup>

#### Additional Matters

Under the Proposed Rule Change, the ICE Group Bylaws would provide that ICE Group will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority.<sup>48</sup> In addition, ICE Group would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.<sup>49</sup> The ICE Group Bylaws would also provide that, in discharging his or her responsibilities as a member of the ICE Group board of directors or as an officer or employee of ICE Group, each such director, officer or employee will (a) comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S.

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<sup>46</sup> See ICE Group Bylaws, Sections 8.5 and 8.6.

<sup>47</sup> See ICE Group Bylaws, Section 8.3.

<sup>48</sup> See ICE Group Bylaws, Section 9.1.

<sup>49</sup> See id.

Regulated Subsidiaries pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of ICE Group to any person to consider, or afford any particular weight to, any such matters or to limit his or her consideration of such matters).<sup>50</sup>

The ICE Group Bylaws would also provide that all confidential information that comes into the possession of ICE Group pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) not be made available to any persons other than to those officers, directors, employees and agents of ICE Group that have a reasonable need to know the contents thereof; (b) be retained in confidence by ICE Group and the officers, directors, employees and agents of ICE Group; and (c) not be used for any commercial purposes.<sup>51</sup> In addition, the ICE Group Bylaws would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of ICE Group to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.<sup>52</sup>

In addition, the ICE Group Bylaws would provide that ICE Group and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries (to the extent of each U.S. Regulated Subsidiary's self-regulatory function) and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the

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<sup>50</sup> See ICE Group Bylaws, Section 3.14(b).

<sup>51</sup> See ICE Group Bylaws, Section 8.1.

<sup>52</sup> See ICE Group Bylaws, Section 8.2.

board of directors or managers of any U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.<sup>53</sup>

Finally, the ICE Group Bylaws would provide that each director of ICE Group would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into consideration the effect that ICE Group's actions would have on the ability of (a) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group and ICE Group to (1) engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity), and ICE Group to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.<sup>54</sup>

#### Amendments to the ICE Group Certificate and Bylaws

Under the Proposed Rule Change, the ICE Group Bylaws would provide that, before any amendment to or repeal of any provision of the ICE Group Bylaws shall be effective, such

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<sup>53</sup> See ICE Group Bylaws, Section 9.4.

<sup>54</sup> See ICE Group Bylaws, Section 3.14(a). This requirement would not, however, create any duty owed by any director, officer or employee of ICE Group to any person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to such matters. See ICE Group Bylaws, Section 3.14(c).

amendment or repeal shall be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that, before such amendment or repeal may be effectuated, the same must be filed with, or filed with and approved by, the Commission pursuant to Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effectuated until filed with, or filed with and approved by, the Commission, as the case may be.<sup>55</sup> These requirements would also apply to any action by ICE Group that would have the effect of amending or repealing any provisions of the ICE Group Certificate.<sup>56</sup>

#### ICE Group Director Independence Policy

Under the Proposed Rule Change, ICE Group would adopt the ICE Group Independence Policy in the form attached to the Proposed Rule Change as Exhibit 5C, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors.

#### **6. Proposed Amendments to Certain Public-Company-Related and Other Provisions of the NYSE Euronext Certificate and Bylaws to be reflected in the NYX Holdings Operating Agreement**

The Exchange is proposing that the NYX Holdings Operating Agreement differ from NYSE Euronext's Certificate and Bylaws to reflect the fact that, after the Merger, NYX Holdings will be an intermediate holding company, will not be a public company traded on an exchange and will not have securities registered under Section 12 of the Exchange Act. As a result, NYX Holdings will not be subject to the Exchange's listing standards or to the corporate governance requirements applicable to publicly traded companies.

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<sup>55</sup> See ICE Group Bylaws, Section 11.3.

<sup>56</sup> See ICE Group Certificate, Article X(C).

As summarized below, the following revisions to the NYSE Euronext Certificate and Bylaws are proposed for the NYX Holdings Operating Agreement in order (1) to simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly owned subsidiary; (2) to conform certain provisions to analogous provisions of the current organizational documents of NYSE Group, which is a wholly owned subsidiary of NYSE Euronext, just as NYX Holdings will be a wholly owned subsidiary of ICE Group following completion of the Merger; and (3) to make certain clarifications and technical edits (for example, to conform the use of defined terms and other provisions, to update cross-references to sections both internal and in the ICE Group Certificate and Bylaws, and to conform to certain other provisions in the ICE Group Certificate and Bylaws).

- The NYSE Euronext Certificate and Bylaws contain provisions relating to the issuance of one or more series of preferred stock. The NYX Holdings Operating Agreement provides for only one class of membership interest and has no provision for a preferred membership interest because the Exchange considers it unlikely that a wholly owned subsidiary would have occasion to issue preferred interests.
- Section 16.1 of the NYX Holdings Operating Agreement would provide that, for so long as NYX Holdings controls, directly or indirectly, any U.S. Regulated Subsidiary, before any amendment to the NYX Holdings Operating Agreement may be effectuated, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective. This provision parallels Article X(C) of the



NYSE Euronext Certificate as supplemented, with respect to NYSE MKT, by Section 10.13 of the NYSE Euronext Bylaws.

- The NYX Holdings Operating Agreement would provide that the registered office and agent of NYX Holdings in Delaware will be the Corporation Trust Company, which is the registered agent of other subsidiaries of NYSE Euronext and of ICE.
- Section 3.1 of the NYSE Euronext Bylaws currently provides that the number of directors may be fixed and changed only by resolution adopted by two-thirds of the directors then in office. The two-thirds requirement will be changed to a majority in Section 3.2 of the NYX Holdings Operating Agreement as is appropriate for a wholly owned subsidiary. This standard has been eliminated from the list of provisions that are automatically suspended or become void upon certain events specified in Section 10.11 of the NYX Holdings Operating Agreement.
- Certain residency requirements applicable to directors and officers of NYSE Euronext and references to U.S. and European director domiciles and to “Deputy” officers that appear in the NYSE Euronext Certificate and Bylaws would not be included in the NYX Holdings Operating Agreement. Specifically, references to deputies in Section 2(A) of Article VI of the NYSE Euronext Certificate, and in Sections 2.2(3) and (5), Section 2.5, Section 3.12, Section 5.1, Section 10.4 and Section 10.5 of the NYSE Euronext Bylaws would not be replicated in the NYX Holdings Operating Agreement. Additionally, Section 4.4 of the NYSE Euronext Bylaws (regarding domicile requirements for members of the Nominating and Governance Committee of the board of directors) and the reference thereto in Section 4.1 would not be replicated in the NYX Holdings Operating Agreement. All, or the portions regarding

director and officer domicile, of the following sections of the NYSE Euronext Bylaws would not be replicated in the NYX Holdings Operating Agreement: all of Section 3.2 (regarding director domicile requirements); all of Section 3.3 (regarding chairman and chief executive officer domicile requirements); portions of Section 3.6 (regarding filling of vacancies on the board); and the cross-references in Section 10.11(B) to the foregoing deleted provisions. In addition, the requirement in Section 3.8 of the NYSE Euronext Bylaws that board meetings be held with equal frequency in the United States and Europe would be replaced with a requirement that one board meeting a year be held in Europe, to parallel the requirement in the ICE Group Bylaws.

- The restrictions on transfers of certain shares of NYSE Euronext common stock contained in Section 4 of Article IV of the NYSE Euronext Certificate have expired in accordance with their terms and would not be included in the NYX Holdings Operating Agreement.
- Notice of meetings of members would not be required under the NYX Holdings Operating Agreement if waived in accordance with Section 8.1(e) thereof.
- The ICE Group Bylaws provide in Section 2.5 that the holders of a majority of the shares outstanding and entitled to vote (giving effect to the “Recalculated Voting Limitation” referred to in Section A.1 of Article V of the ICE Group Certificate, if applicable) may call special meetings of stockholders. A comparable provision is appropriate for NYX Holdings to provide additional flexibility to ICE Group to take actions in its capacity as the sole member of NYX Holdings following completion of the Merger. Accordingly, Section 8.1(d) of the NYX Holdings Operating Agreement

- would allow the holders of a majority of the membership interests outstanding and entitled to vote (giving effect to the “Recalculated Voting Limitation,” if applicable) to call special meetings of members.
- The requirement in Section 2.6 of the NYSE Euronext Bylaws for the appointment of an inspector of elections for stockholders meetings would not be included in the NYX Holdings Operating Agreement because the requirement for an inspector of elections under the Delaware General Corporation Law (the “DGCL”) would no longer apply to NYX Holdings after completion of the Merger.<sup>57</sup>
  - The requirement in Section 2.7 of the NYSE Euronext Bylaws that directors be elected by a majority of the votes cast (and that they must tender their resignation if such a majority vote is not received), except in the case of contested elections, and that the board of directors may fill any resulting vacancy or may decrease the size of the board, would not be included in the NYX Holdings Operating Agreement, and a plurality voting standard would be adopted for all director elections. These requirements would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member.
  - Section 2.10 of the NYSE Euronext Bylaws requires certain advance notice from stockholders of director nominations and stockholder proposals, and that only business brought before a special meeting of stockholders pursuant to NYX Euronext’s notice of the meeting may be brought before the meeting. This provision would not be included in the NYX Holdings Operating Agreement because the

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<sup>57</sup> See Section 231(e) of the Delaware General Corporation Law.

requirements would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member.

- In order to give ICE Group additional flexibility to take actions in its capacity as the sole member of NYX Holdings following completion of the Merger, Section 7.5 of the NYX Holdings Operating Agreement would allow the member to take any action without a meeting and without prior notice if consented to, in writing, by the member.
- In order to give ICE Group additional flexibility to take actions in its capacity as the sole member of NYX Holdings following completion of the Merger, Section 3.4 of the NYX Holdings Operating Agreement would allow members to fill board vacancies.
- The requirements in Article X of the NYSE Euronext Certificate for a supermajority stockholder vote to amend or repeal certain provisions of the certificate would be eliminated from the NYX Holdings Operating Agreement and a majority vote requirement would apply. A supermajority vote requirement would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member, and a majority voting standard is consistent with the standard generally applicable for actions by the parent entity of other wholly owned subsidiaries of NYX Holdings.
- Section 3.4 of the NYX Holdings Operating Agreement, which is analogous to current Section 3.6 of the NYSE Euronext Bylaws, would include “(if any)” after the reference therein to the Nominating and Governance Committee, because NYX Holdings would become a wholly owned subsidiary of ICE Group and, as such, may not have a Nominating and Governance Committee.

- Section 3.4 of the NYSE Euronext Bylaws, which relates to independence requirements, including the requirement that at least 75% of the board must be independent, would not be replicated in the NYX Holdings Operating Agreement because NYX Holdings would be a wholly owned subsidiary of ICE Group after completion of the Merger and, therefore, it is likely that executives of ICE Group and its subsidiaries will serve on this board.
- Section 3.8(a) of the NYX Holdings Operating Agreement would provide that notice of board meetings is not required if waived in accordance with Section 3.8(b), which is less restrictive than Section 3.9 of the NYSE Euronext Bylaws.
- The advance notice period in Section 3.9 of the NYSE Euronext Bylaws for notices of board meetings sent by first-class mail would be reduced from four days to three days in Section 3.8(a) of the NYX Holdings Operating Agreement. This change conforms the notice period to Section 3.6(b) of the ICE Group Bylaws.
- Section 3.12 of the NYSE Euronext Bylaws requires that, if the chairman or deputy chairman of the board of directors is also the chief executive officer or deputy chief executive officer, he or she may not participate in executive sessions of the board of directors, and if the chairman is not the chief executive officer or deputy chief executive officer, he or she will act as a liaison between the board of directors and the chief executive officer or the deputy chief executive officer. No analogous provisions would be included in the NYX Holdings Operating Agreement.
- Certain aspects of the indemnification and expense advancement provisions in Section 15.2 of the NYX Holdings Operating Agreement, including the terms of any insurance policy maintained by NYX Holdings, would be simplified from Section

10.6 of the NYSE Euronext Bylaws in light of the fact that there are not expected to be any independent, non-executive directors of NYX Holdings, and, therefore, a more streamlined process for indemnification claims is appropriate.

- Section 10.10(A) of the NYSE Euronext Bylaws enumerates provisions of the Bylaws for which amendment requires approval by a supermajority of directors. The supermajority approval requirement would be eliminated in Section 16.1 of the NYX Holdings Operating Agreement by decreasing the current two-thirds standard to a majority of the directors then in office, as is appropriate for a wholly owned subsidiary.
- The supermajority stockholder vote requirements in Section 10.10(B) of the NYSE Euronext Bylaws would be eliminated in the NYX Holdings Operating Agreement because a supermajority vote requirement would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member.
- The NYSE Euronext Bylaw provisions that are subject to automatic suspension under Section 10.11 would be revised in Section 16.3 of the NYX Holdings Operating Agreement to reflect elimination of the supermajority voting provisions in Sections 10.10(A) and (B) discussed above.

In addition, the current Independence Policy of the NYSE Euronext board of directors would, effective as of the Merger, cease to apply.

## **7. Proposed Amendments to the NYSE Group Certificate**

Under the Proposed Rule Change, the revisions summarized below to the NYSE Group Certificate are proposed in order to conform certain provisions to the analogous provisions of the organizational documents of NYX Holdings, which would likewise be a wholly owned

subsidiary of ICE Group following completion of the Merger, as well as to make certain clarifications and technical edits:

- Section 4(a) of Article IV of the NYSE Group Certificate would be amended to contemplate successors to NYSE Euronext as the holder of all of the issued and outstanding shares of NYSE Group for purposes of the NYSE Trust Agreement.
- Sections 4(b)(1)(A) and 4(b)(2)(A) of Article IV of the NYSE Group Certificate would be amended to clarify that the voting ownership concentration limitations in the NYSE Group Certificate would be effective “for so long as the Corporation shall control, directly or indirectly” a U.S. Regulated Subsidiary, as defined in Section 4(b)(1)(A). Conforming changes relating to the definition of U.S. Regulated Subsidiary and the change of name of NYSE Alternext to NYSE MKT have been made later in the same section and thereafter.
- Typographical errors in references to Exchange Act Section 3(a)(3) would be corrected in Section 4(b)(1)(E)(vi) and (xii) of Article IV.
- Section 3 of Article V would be amended by adding the words “from time to time” to conform the provision to the NYX Holdings Operating Agreement.
- Section 5 of Article V of the NYSE Group Certificate would be amended to clarify that the right of the NYSE Group board of directors to remove directors is subject to any rights of holders of any preferred stock in order to make this provision consistent with Section 2 of Article IV of the NYSE Group Certificate, which provides that preferred stock may be issued that may have voting rights.
- Numbering of certain sections of the NYSE Group Certificate would be updated to reflect the amendments set forth above.

## **8. Proposed Amendments to Board Composition Requirements for the Exchange, NYSE MKT, NYSE Market and NYSE Regulation**

The Fourth Amended and Restated Operating Agreement, dated as of August 23, 2012, of the Exchange (the “Exchange Operating Agreement”), currently provides that (1) a majority of the members of the Exchange’s board of directors must be U.S. persons and members of the board of directors of NYSE Euronext, and (2) at least 20% of the Exchange’s board members must be persons who are not members of the board of directors of NYSE Euronext but who qualify as independent under the independence policy of the Exchange’s board of directors (the “Non-Affiliated Exchange Directors”).<sup>58</sup> The nominating and governance committee of the NYSE Euronext board of directors is required to designate as Non-Affiliated Exchange Directors the candidates recommended jointly by the Director Candidate Recommendation Committees of each of NYSE Market and NYSE Regulation or, in the event there are Petition Candidates (as such term is defined in the Exchange Operating Agreement), the candidates that emerge from a specified process will be designated as the Non-Affiliated Exchange Directors.<sup>59</sup>

Under the Proposed Rule Change, these provisions would be amended to refer to ICE Group instead of NYSE Euronext. Also, references throughout to the Exchange’s “Corporation Independence Policy” would be changed to “Company Independence Policy” in recognition of the form of organization of the Exchange.

Substantially the same revisions would be made to the analogous provisions of the Fourth Amended and Restated Operating Agreement of NYSE MKT.

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<sup>58</sup> See Exchange Operating Agreement, Section 2.03(a).

<sup>59</sup> See id.



In addition, references to NYSE Euronext in the Director Independence Policy of each of the Exchange, NYSE Market, NYSE Regulation and NYSE MKT would be revised to refer to ICE Group.

**9. Other Changes to the Constituent Documents of the Exchange, NYSE MKT, NYSE Market and NYSE Regulation**

The revisions to the Fourth Amended and Restated Operating Agreement of NYSE MKT indicate that NYSE MKT will be an indirect wholly owned subsidiary of ICE Group rather than a direct subsidiary of NYSE Euronext, and the phrase “NYSE/Amex” has been inserted before references to a merger in 2008 in the recitals to distinguish that merger from the Merger.

The Second Amended and Restated Bylaws of NYSE Market and the Third Amended and Restated Bylaws of NYSE Regulation would be amended to reflect the change from NYSE Euronext to ICE Group. In the case of NYSE Market, the address of the registered office and registered agent has been updated.

In the director independence policies, typographical errors in references to Exchange Act Section 3(a)(3) would be corrected in the first paragraph under the section captioned “Independence Qualifications.”

**10. Proposed Amendments to the Exchange Rules, NYSE MKT Rules and NYSE Arca Equities Rules**

Under the Proposed Rule Change, certain technical amendments would be made to the Exchange Rules. First, references therein to “NYSE Euronext” would be replaced with references to ICE Group, except that references to NYSE Euronext in Rule 22 and Rule 422 would be replaced with references to NYX Holdings and references to ICE Group would be added. Second, Rule 2 would be revised to delete the definitions of “member” and “member organization” relating to NYSE MKT, which are set forth in Rule 2 for purposes of Section 1(L)

of Article 5 of the NYSE Euronext Certificate, because under the Proposed Rule Change, the ICE Group Certificate will incorporate this language.

In addition, certain technical amendments would be made to the NYSE MKT Rules and NYSE Arca Equities Rules to replace references to “NYSE Euronext” with references to ICE Group, except that references to NYSE Euronext in NYSE MKT Rules 107B and 501 would be changed to NYX Holdings. Also, certain provisions in NYSE MKT Rule 104T relating to restrictions on transfer in the NYSE Euronext Certificate would be eliminated because the referenced restrictions are no longer in effect and there will be no analogous provision in the ICE Group Certificate.

## 2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) of the Exchange Act<sup>60</sup> in general, and furthers the objectives of Section 6(b)(1)<sup>61</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the U.S. Regulated Subsidiaries after the Merger, the U.S. Regulated Subsidiaries will operate in the same manner following the Merger as they operate today. Thus, the Commission will continue to have plenary regulatory authority over the U.S. Regulated Subsidiaries, as is the case currently with these entities. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will

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<sup>60</sup> 15 U.S.C. 78f(b).

<sup>61</sup> 15 U.S.C. 78f(b)(1).

have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act<sup>62</sup> because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and 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.

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 Exchange Act. The Proposed Rule Change is not designed to address any competitive issue in the U.S. or European securities markets or have any impact on competition in those markets; rather, it will combine the U.S. equities businesses of NYSE Euronext with the commodities and futures businesses of ICE. The ownership of U.S. securities exchanges will not become more concentrated as a result of the Proposed Rule Change because ICE currently owns no U.S. securities exchange. With respect to operations outside the United States, ICE has informed NYSE Euronext that it expects the derivatives business of LAM will be gradually transitioned to ICE Futures Europe, as discussed above, but such transition is subject to regulatory approval in

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<sup>62</sup> 15 U.S.C. 78f(b)(5).

the United Kingdom.

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 up to 90 days (i) as the Commission may designate 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 No. SR-NYSE-2013-42 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-NYSE-2013-42. 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 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, 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 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-NYSE-2013-42 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>63</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>63</sup> 17 CFR 200.30-3(a)(12).