

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75105; File No. SR-NYSE-2015-16)

June 4, 2015

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change to Amend the Seventh Amended and Restated Operating Agreement of the New York Stock Exchange LLC

I. Introduction

On April 6, 2015, the New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend the Seventh Amended and Restated Operating Agreement (the “Operating Agreement”) of the Exchange. The proposed rule change was published for comment in the Federal Register on April 24, 2015.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

NYSE proposed to amend the Exchange’s Operating Agreement to remove the requirement that the independent directors that make up the majority of the board of directors of the Exchange (“Board”) also be directors of Intercontinental Exchange, Inc. (“ICE”), the Exchange’s parent company. Currently, Section 2.03(a)(i) of the Operating Agreement, which governs the Board’s composition, provides that a majority of the Exchange’s directors shall be U.S. persons who are members of the board of directors of ICE and who satisfy the Exchange’s

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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.

<sup>4</sup> See Securities Exchange Act Release No. 74766 (April 20, 2015), 80 FR 23057 (“Notice”).

Company Director Independence Policy. Each such director is defined as an “ICE Independent Director” in Section 2.03(a)(i)(1) of the Operating Agreement. The Exchange proposed to amend Section 2.03(a)(i) to remove the requirement that the independent directors, making up the majority of the Board, also be directors of ICE, by amending the definition of “ICE Independent Director” to remove the reference to ICE, and to make conforming changes in both subparagraphs (i) and (ii) of Section 2.03(a).

The Exchange represented that, even upon approval of this modification to its Operating Agreement, a majority of the directors of the Board would continue to satisfy the Company Director Independence Policy.<sup>5</sup> The Exchange also noted that it believes that eliminating the requirement that the independent directors of the Exchange also be directors of ICE will allow the Exchange to broaden the pool of potential Board members, resulting in a more diversified Board membership while still ensuring the directors’ independence.<sup>6</sup> The Exchange further represented that eliminating the requirement that the independent directors of the Exchange also be directors of ICE will result in the Exchange’s Board composition requirements being more consistent with its affiliate, NYSE Arca, Inc., which does not require any of its directors to be directors of ICE.<sup>7</sup>

### III. Discussion and Commission Findings

After review, the Commission finds that the proposed rule change is consistent with the

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<sup>5</sup> See Notice, 80 FR at 23057.

<sup>6</sup> Id.

<sup>7</sup> Id.

Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>9</sup> which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply and to enforce compliance by its members and persons associated with its members with the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that, while the proposal removes the requirement that the independent directors who make up the majority of the Board also be ICE directors, it does not alter the requirement under the Operating Agreement that a majority of the Board must satisfy the Exchange's Company Director Independence Policy.<sup>11</sup> Thus, the majority of directors on the Exchange's Board must still qualify as independent directors under the Exchange's Company Director Independence Policy. Moreover, removing the requirement that the independent directors on the Exchange's Board also be directors of ICE may result in a more diversified Board composition as candidates for membership on the Board who qualify as independent

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<sup>8</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78(b)(1).

<sup>10</sup> 15 U.S.C. 78(b)(5).

<sup>11</sup> See Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47151 (August 7, 2012) (SR-NYSE-2012-17) (approving, among other things, the Exchange's Company Director Independence Policy).

under the Company Director Independence Policy need not be limited to those candidates who also serve on the board of directors of ICE.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2015-16) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Robert W. Errett  
Deputy Secretary

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