

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79902; File No. SR-NSX-2016-16)

January 30, 2017

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, in Connection with a Proposed Acquisition of the Exchange by NYSE Group, Inc.

I. Introduction

On December 22, 2016, National Stock Exchange, Inc. (“NSX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ a proposed rule change to make certain amendments to its corporate governance documents and rules, and the corporate governance documents of NYSE Group, Inc. (“NYSE Group”), NYSE Holdings LLC, (“NYSE Holdings”), Intercontinental Exchange Holdings, Inc. (“ICE Holdings”), and Intercontinental Exchange, Inc. (“ICE”) in order to effectuate a proposed transaction (the “Transaction”) in which the Exchange will become a wholly-owned subsidiary of NYSE Group. The proposed rule change was published for comment in the Federal Register on December 30, 2016.⁴ On January 23, 2017, the Exchange submitted Amendment No. 1 to the proposed rule change.⁵ The Commission received no comments on the proposal. This order approves the proposal, as modified by Amendment No. 1.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 79684 (December 23, 2016), 81 FR 96552 (SR-NSX-2016-16) (“Notice”).

⁵ In Amendment No. 1, the Exchange corrected a technical error in the proposed Seventh Amended and Restated Bylaws of ICE. Specifically, the Exchange replaced a reference in Section 12.1(a)(1) of Article XII of the ICE Bylaws to “the Amended and Restated

II. Description of the Proposal

On December 14, 2016, ICE entered into an agreement with the Exchange pursuant to which its wholly-owned subsidiary, NYSE Group, will acquire all of the outstanding capital stock of the Exchange (the “Acquisition”). As a result of the Acquisition, the Exchange will be renamed NYSE National, Inc. (“NYSE National”) and will be operated as a wholly-owned subsidiary of NYSE Group. NYSE Group is a wholly-owned subsidiary of NYSE Holdings, which is in turn 100% owned by ICE Holdings. ICE is a public company listed on the New York Stock Exchange LLC (the “NYSE”), and owns 100% of ICE Holdings.⁶ Following the Acquisition, the Exchange will continue to be registered as a national securities exchange.⁷ According to the Exchange, as it does today, the Exchange will continue to have separate rules, membership rosters, and listings that will be distinct from the rules, membership rosters, and listings of the three other registered national securities exchanges owned by NYSE Group, namely, the NYSE, NYSE MKT LLC (“NYSE MKT”), and NYSE Arca, Inc. (“NYSE Arca”) (together, the “NYSE Exchanges”).⁸

In connection with the Acquisition, the Exchange proposes to amend its Certificate of Incorporation and Third Amended and Restated Bylaws. In addition, the Exchange proposes to amend certain corporate governance documents of NYSE Group, NYSE Holdings, ICE Holdings

Certificate of Incorporation of the Corporation” with a reference to “these bylaws.” Amendment No. 1 was technical in nature and therefore does not need to be published for comment.

⁶ See Notice, supra note 4, at 96552.

⁷ See id.

⁸ See id.

and ICE,⁹ such that the conditions in those documents are equally applicable to the NYSE NSX.¹⁰ According to the Exchange, the amendments would reflect the Exchange's proposed new ownership and, in certain cases, align the Exchange's governance provisions to those of other NYSE Exchanges.¹¹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of Section 6 of the Act¹² and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(1) and (3) of the Act,¹⁴ which, among other things, require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or

⁹ The NYSE Exchanges filed proposed rule changes, which propose similar amendments to their respective governance documents. See Securities Exchange Act Release Nos. 79671 (December 22, 2016), 81 FR 96128 (SR-NYSE-2016-90); 79678 (December 22, 2016), 81 FR 96102 (May 16, 2016) (SR-NYSEArca-2016-167); and 79675 (December 22, 2016), 81 FR 96128 (May 16, 2016) (SR-NYSEMKT-2016-122).

¹⁰ See Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (approving rule changes related to NYSE Euronext becoming a wholly owned subsidiary of ICE (then called IntercontinentalExchange Group, Inc.)).

¹¹ See note 9. The proposed changes to the governance documents, NSX Rules and fee schedule are set forth in greater detail in the Notice. See Notice, supra note 4, at 96553-63.

¹² 15 U.S.C. 78f.

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(1) and (b)(3).

more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission also finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁵ which requires that the rules of an exchange be designed 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.¹⁶

According to the Exchange, the proposed rule change consists of (i) non-substantive changes that will conform terminology of the Exchange to that of the NYSE Exchanges, and (ii) substantive and/or procedural changes that are designed to conform the Exchange's rules and procedures to those of other NYSE Exchanges.¹⁷ The Exchange has represented to the Commission that the proposed rule change presents no novel issues, as all of the substantive and/or procedural changes are derived from existing rules of other NYSE Exchanges.

Furthermore, the Exchange has made the following representations:

- The proposed rule change would continue the requirement in the Exchange's Bylaws that an independent board committee oversees the adequacy and effectiveness of the performance of the Exchange's self-regulatory responsibilities;¹⁸
- The Regulatory Oversight Committee would be similar in composition and function to committees of other self-regulatory organizations, and would be similarly designed

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ The text of the proposed rule change is consistent with Sections 6(b)(1), (3) and (5) of the Act. However, the Commission notes that the Exchange must continue to comply with the provisions of the Commission's Cease and Desist Order. See Securities Exchange Act Release No. 51714 (May 19, 2005).

¹⁷ See Notice, supra note 4, at 96563-64.

¹⁸ See id. at 96563.

to (i) ensure the adequacy and effectiveness of the Exchange's regulatory and self-regulatory responsibilities; and (ii) to assist the Board and any other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions.¹⁹

- The proposed rule change is not inconsistent with the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order, entered by the Commission on May 19, 2005.²⁰
- The changes to the corporate and governance structure will place the Exchange in a better position to improve its technology and engage in value-enhancing transactions that will enable the Exchange to more effectively participate and compete in the marketplace.²¹
- The Exchange's proposed changes to its corporate governance structure are designed to align its structure with that of the NYSE Exchanges to promote a consistent approach to corporate governance, and to simplify and create greater consistency with the organizational documents and governance practices of the NYSE Exchange.²²

The Exchange has represented to the Commission that it believes that the benefits of aligning its corporate documents to those of other NYSE Exchanges outweigh the costs, if any, to leaving its rules as is and being the sole outlier among the NYSE Exchanges. The

¹⁹ See id.

²⁰ See id. at 96553. See also note 16.

²¹ See id. at 96554.

²² See id. at 96552-53.

Commission also notes that it received no comments on the proposed rule change. Finally, the Commission believes that uniformity of terminology as well as corporate governance structure among the wholly owned subsidiaries of NYSE Group, including the NYSE Exchanges and the Exchange, to the extent possible, should allow for a more streamlined, consistent, and effective approach to both compliance and surveillance in furtherance of the rules of the Exchange and the federal securities laws.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²³ that the proposed rule change (SR-NSX-2016-16), as modified by Amendment No.1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Eduardo A. Aleman
Assistant Secretary

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).