

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60261; File No. SR-NYSE-2009-60)

July 8, 2009

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC in connection with the Proposal of NYSE Euronext to Require that At Least Three-fourths of Its Directors Satisfy Independence Requirements

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 23, 2009, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is submitting this rule filing in connection with the proposal of its ultimate parent, NYSE Euronext (the “Corporation”),⁴ to amend its bylaws and Director Independence Policy to require that at least three-fourths of the members of its Board of Directors shall satisfy the independence requirements for directors of the Corporation. Currently the bylaws and Director Independence Policy require that all members of the Board of Directors, other than the Chief Executive Officer and the Deputy Chief

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The NYSE, a New York limited liability company, is an indirect wholly-owned subsidiary of NYSE Euronext.

Executive Officer, shall satisfy the independence requirements.⁵ The text of the proposed rule change is attached hereto as Exhibit 5 [sic], and is available on the Exchange’s Web site at www.nyse.com, at the Exchange’s principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Bylaws of the Corporation, which is the ultimate parent company of the Exchange, require that “all members of the Board of Directors, other than the Chief Executive Officer and the Deputy Chief Executive Officer, shall satisfy the independence requirements for directors of the Corporation, as modified and amended by the Board of Directors from time to time.” Similarly, the Director Independence Policy of the Corporation states that “[e]ach Director (other than the Chief Executive Officer and the

⁵ See Section 3.4 of the “Amended and Restated Bylaws of NYSE Euronext.” The provisions of any other internal policy documents of the Corporation containing substantially equivalent language will be modified to conform with the proposed Bylaw and Director Independence Policy changes.

Deputy Chief Executive Officer), including the Chairman of the Board and the Deputy Chairman of the Board if not also the Chief Executive Officer or the Deputy Chief Executive Officer, shall be independent within the meaning of this Policy.” The Corporation desires to amend both documents to strike a more appropriate balance between the independence requirements and other qualifications of its directors. Specifically, the Corporation proposes to revise the independence standard in the Bylaws to provide that, “At least three-fourths of the members of the Board of Directors shall satisfy the independence requirements for directors of the Corporation, as modified and amended by the Board of Directors from time to time.”⁶ The three-fourths requirement will still adequately protect the independent judgment of the Board of Directors (“Board”), which the Corporation believes is essential to the quality of Board oversight, while permitting the Corporation to consider a broader range of experienced and knowledgeable individuals as directors.⁷ The current Bylaw provision eliminates from consideration as potential directors of the Corporation a substantial number of individuals who could contribute significantly to the deliberations of the Corporation’s Board by virtue of their knowledge, ability and experience. For example, an executive of a U.S. company listed on NYSE could not serve as a member of the Board. Such a restriction deprives the Corporation of the proven judgment and valuable insights that such individuals might contribute to the Board’s decision-making process. There are other categories of individuals who fail the

⁶ The corresponding revised language in the Director Independence Policy would state, “At least three-fourths of the Directors shall be independent within the meaning of this Policy.”

⁷ There are currently 18 directors on the Board, including the Chief Executive Officer and the Deputy Chief Executive Officer. The Bylaws currently require 16 of the directors (i.e., all but the two aforementioned employees) to be independent. The proposed amendment to the Bylaws would require a minimum of 14 of the directors to be independent.

independence requirements for other reasons, yet who nonetheless could make significant contributions as directors of the Corporation.

The proposed three-fourths standard for independence remains higher than the majority standard that the Commission has accepted and approved in comparable circumstances. For example, the “Corporate Governance Guidelines” of the NASDAQ OMX Group, Inc., which is the parent company of the NASDAQ Stock Market LLC, state, “The Board of NASDAQ OMX is comprised of a majority of directors, who qualify as “independent directors” under the Marketplace Rules of The NASDAQ Stock Market and Securities and Exchange Commission requirements.”⁸ The NYSE’s own corporate governance standards for its listed companies provide that, “Listed companies must have a majority of independent directors.”⁹ Finally, the Commission’s own 2004 release on “Fair Administration and Governance of Self-Regulatory Organizations” proposed “that the board of each exchange and association be composed of a majority of independent directors.”¹⁰ In the latter case, there would be no justification for holding the governing board of the ultimate parent of an exchange to a higher standard than the governing board of the exchange itself. Consequently, there is adequate precedent with respect to the proposed rule change.

The proposed amendment to the Bylaws and Director Independence Policy will not alter or amend the standards by which the Corporation makes a determination regarding

⁸ See “The NASDAQ OMX Group, Inc. Corporate Governance Guidelines,” Section III.B. (Independence of Non-Employee Directors).

⁹ See “NYSE Listed Company Manual,” Section 303A.01 (Independent Directors).

¹⁰ See Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004), Section II.B.2 (Board Consisting of a Majority of Independent Directors).

whether an individual director is independent. In addition, the proposed amendment will not affect in any way the independence requirements of the Exchange with respect to its directors or the director independence requirements of any of the other self-regulatory organizations for which the Corporation is the ultimate parent or of NYSE Group, Inc., the intermediate holding company, including in each case the number of required independent directors.¹¹ The proposed amendment will also not affect in any way the other director qualification requirements set out in the Bylaws of the Corporation.¹²

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)¹³ of the Act, in general,

¹¹ In its 2006 release approving the NYSE's business combination with Archipelago Holdings, Inc. (the "Arca Approval Release"), the Commission noted that it ". . . does not believe that there is only one method to satisfy the fair representation requirements of Section 6(b)(3) of the Act, and reviews each SRO proposal on its own terms to determine if it is consistent with the Act." See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (File No. SR-NYSE-2005-77), 11259, note 97. In this regard, the "fair representation candidate" on the NYSE board is required by the NYSE's operating agreement to be independent, and the Arca Approval Release notes that even a fully independent board could be consistent with the Act and the fair representation requirement, in which case "the candidate or candidates selected by members would have to be independent." 71 FR at 11260. Among other things, the NYSE board oversees NYSE Regulation, Inc., a not-for-profit independent subsidiary that conducts the regulatory function of NYSE on its behalf pursuant to contractual and other arrangements. Consequently, the Commission stated its conclusion in the Arca Approval Release that "[t]he NYSE's proposed requirement that 20% of the directors of the boards of directors of New York Stock Exchange LLC, NYSE Market, and NYSE Regulation be chosen by members and the means by which they will be chosen satisfies the fair representation of members in the selection of directors and the administration of the exchange consistent with the requirements in Section 6(b)(3) of the Act." 71 FR at 11259.

¹² E.g., Section 3.2 (Certain Qualifications for the Board of Directors) of the Bylaws.

¹³ 15 U.S.C. 78f(b).

and furthers the objectives of Section 6(b)(5)¹⁴ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. More specifically, the Exchange believes that, because the proposed rule change will permit the Corporation to consider a broader range of experienced and knowledgeable individuals to serve as directors of the Corporation while also preserving the principle that effective boards of directors exercise independent judgment in carrying out their responsibilities, it will thereby contribute to perfecting the mechanism of a free and open market and a national market system and is also consistent with the protection of 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 Act.

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 35 days of the date of publication of this notice in the Federal Register or

¹⁴ 15 U.S.C. 78f(b)(5).

within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve 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. Please include File Number SR-NYSE-2009-60 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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 Number SR-NYSE-2009-60 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.¹⁵

Elizabeth M. Murphy
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).