

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61947; File No. SR-NYSE-2010-18)

April 20, 2010

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change to Amend the Bylaws of NYSE Euronext to Adopt a Majority Voting Standard in Uncontested Elections of Directors

On March 5, 2010, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the By-Laws of its parent corporation, NYSE Euronext (“Corporation”). The proposed rule change was published for comment in the Federal Register on March 18, 2010.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

On behalf of the Corporation, NYSE proposed to make certain amendments to the Corporation’s By-Laws to modify its direct election procedures. Under the existing By-Laws, directors are elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Under the Corporation’s corporate governance guidelines previously adopted by the Board, however, any director nominee in an uncontested election (being an election in which the number of nominees equals the number of directors to be elected) who receives a greater number of “withheld” votes than “for” votes (including any “against” votes if that option were to be made available on the proxy card) must immediately tender his or her resignation from the Board.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61694 (March 11, 2010), 75 FR 13170.

NYSE proposed to amend the Corporation's By-Laws to add an explicit majority voting provision for uncontested director elections that would replace the plurality vote standard for such elections that is currently in the By-Laws. Contested elections would remain subject to the plurality standard.

Under the proposed amendment to the Bylaws, the proxy card would change for an uncontested election, and the stockholders would be given the choice to vote "for," "against" or "abstain" with respect to each director nominee individually. In such an election, each director would be elected by the vote of the majority of the votes cast with respect to such director's election, meaning that the number of votes cast "for" such director's election exceeded the number of votes cast "against" that director's election (with "abstentions" not counted as a vote either "for" or "against" such director's election). If any incumbent director fails to receive a majority of the votes cast, such director would be required to tender his or her resignation to the Nominating and Governance Committee of the Board (or another committee designated by the Board), and such committee would recommend to the Board whether to accept or reject such resignation or whether other action should be taken. The Board would then act on the recommendation of such committee and publicly disclose its decision regarding the tendered resignation and the rationale behind the decision.⁴

⁴ The proposed amendment to the Bylaws also provides that a director who tenders his or her resignation would not participate in the recommendation by the Nominating and Governance Committee or the Board of Directors action regarding whether to accept the tendered resignation. If each member of the Nominating and Governance Committee fails to receive a majority of the votes cast in the same uncontested election, then the independent directors who received a majority of the votes cast in such election must appoint a committee among themselves to consider the tendered resignation and recommend to the Board whether to accept it. However, if the only directors who received a majority of the votes cast in such election constitute three or fewer directors,

Pursuant to the proposed amendment to the By-Laws, if the Board accepts a director's resignation as part of the process described above for uncontested elections, or if a nominee for director is not elected and the nominee is not an incumbent director, the Board may (i) fill the remaining vacancy as provided in Section 3.6 of the By-Laws and Article VI, Section 6 of the Certificate of Incorporation (involving a majority vote of the remaining directors then in office, though less than a quorum, or by the sole remaining director) or (ii) decrease the size of the Board as provided in Section 3.1 of the Bylaws and Article VI, Section 3 of the Certificate of Incorporation (involving adoption of a resolution by two-thirds of the directors then in office).

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,⁶ 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,⁷ 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

all directors may participate in the action regarding whether to accept the tendered resignation.

⁵ 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).

⁶ 15 U.S.C. 78(b)(1).

⁷ 15 U.S.C. 78f(b)(5).

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 believes that the proposed rule change to amend the Corporation's By-Laws to adopt a majority vote standard for uncontested elections is consistent with the Act. The Commission believes that the proposed rule change is designed to allow the members of the Corporation's Board of Directors to be elected in a manner that closely reflects the desires of its shareholders, while also providing a process for addressing the circumstance when a director fails to receive a majority of votes in an uncontested election.⁸

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2010-18) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁸ The Commission notes that NYSE represented that the proposed change would not affect the voting limitations contained in the Corporation's certificate of incorporation.

⁹ 17 CFR 200.30-3(a)(12).