

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66662; File No. SR-NYSE-2012-08)

March 26, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarifying that Rule Change in Connection with Proposed Combination Between NYSE Euronext and Deutsche Börse AG Will Not Become Effective

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Exchange Act” or “Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 16, 2012, the New York Stock Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change (the “Proposed Rule Change”) as described in Items I and II below, which Items have been prepared by the Exchange. 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 previously submitted a proposed rule change<sup>4</sup> (the “Holdco Proposal”) in connection with the proposed business combination (the “Combination”) of NYSE Euronext, a Delaware corporation, and Deutsche Börse AG, an *Aktiengesellschaft* organized under the laws of the Federal Republic of Germany (“Deutsche Börse”). The Holdco Proposal was

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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. 65562 (October 14, 2011), 76 FR 65288 (October 20, 2011) (SR-NYSE-2011-51).

conditionally approved by the Commission.<sup>5</sup> The Exchange is submitting this Proposed Rule Change in order to clarify that the Holdco Proposal will not become effective. The text of the Proposed Rule Change is available at the Exchange, [www.nyse.com](http://www.nyse.com), and the Commission's Public Reference Room.

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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to clarify that the Combination contemplated by the Holdco Proposal will not be completed and, therefore, the Holdco Proposal conditionally approved by the Commission<sup>6</sup> will not become effective.

The Holdco Proposal was submitted to the Commission in connection with the Combination.<sup>7</sup> The purpose of the Holdco Proposal was to adopt the rules necessary to permit NYSE Euronext and Deutsche Börse to effect the Combination and to amend certain provisions of the organizational and other governance documents of Alpha Beta Netherlands Holding N.V.,

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<sup>5</sup> See Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (File Nos. SR-EDGA-2011-34; SR-EDGX-2011-33; SR-ISE-2011-69; SR-NYSE-2011-51; SR-NYSEAmex-2011-78; SR-NYSEArca-2011-72).

<sup>6</sup> Id.

<sup>7</sup> See supra note 4.

a holding company organized under the laws of the Netherlands (“Holdco”), the Exchange, NYSE Group, Inc. and certain other subsidiaries of NYSE Euronext as well as certain rules of the Exchange, NYSE Amex LLC and NYSE Arca Equities, Inc.

The Commission’s approval of the Holdco Proposal was conditioned on completion of the Combination, and the Commission noted that if the Combination is not consummated, the Holdco Proposal would not become effective.

On February 2, 2012, following the European Commission’s decision to prohibit the Combination, NYSE Euronext and Deutsche Börse agreed to terminate the Business Combination Agreement, dated as of February 15, 2011, as amended by Amendment No. 1 dated as of May 2, 2011 and by Amendment No. 2 dated as of June 16, 2011, by and among NYSE Euronext, Deutsche Börse, Holdco and Pomme Merger Corporation, a Delaware corporation and newly formed wholly owned subsidiary of Holdco.

Accordingly, the Combination contemplated by the Holdco Proposal will not be completed and, therefore, the Holdco Proposal conditionally approved by the Commission will not become effective.

## 2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)<sup>8</sup> of the Securities Exchange Act of 1934 (the “Exchange Act”) in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

system. Specifically, the Exchange believes that the Proposed Rule Change will clarify the corporate structure of the Exchange, which will promote just and equitable principles of trade and help 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

At any time within 60 days of the filing of the Proposed Rule Change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

#### 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 Number SR-NYSE-2012-08 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-2012-08. 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 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 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-2012-08 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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