

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87322; File No. SR-NYSE-2019-55)

October 16, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend the Certificate of Incorporation of Intercontinental Exchange, Inc.

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> notice is hereby given that, on October 3, 2019, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III 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 proposes to amend the certificate of incorporation of Intercontinental Exchange, Inc. (“ICE”) to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

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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.

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

The Exchange proposes to amend the certificate of incorporation of ICE to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes.

The proposed amendments to the certificate of incorporation were approved by the Board of Directors of ICE on September 19, 2019. The Exchange proposes that the amendments would be effective upon filing with the Secretary of State of the State of Delaware.

Change in Registered Office and Registered Agent

ICE is a corporation organized under the laws of the State of Delaware. As such, ICE is required to have and maintain a registered office and registered agent in the State of Delaware.<sup>4</sup> The Exchange proposes to change the address of ICE's registered office and the name of ICE's registered agent, which would make them consistent with the governing documents of the Exchange and its intermediate holding companies.<sup>5</sup>

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<sup>4</sup> See Del. Code tit 8, §§131 and 132.

<sup>5</sup> See Securities Exchange Release Nos. 82640 (February 6, 2018), 83 FR 6076 (February 12, 2018) (notice of filing and immediate effectiveness of proposed change to amend certain of the governing documents of its intermediate parent companies) (SR-NYSE-2018-07). As a limited liability company organized under the laws of the State of New York, the New York Stock Exchange LLC has a registered agent and registered office in New York. See Securities Exchange Release No. 82922 (March 22, 2018), 83 FR 13156 (March 27, 2018) (SR-NYSE-2018-09) (notice of filing and immediate effectiveness of proposed change to amend the Eleventh Amended and Restated Operating Agreement).

In order to implement the change, ICE intends to file with the Secretary of State of the State of Delaware a Certificate of Change of Registered Agent and/or Registered Office (“Certificate of Change”),<sup>6</sup> which will change the address of its registered office and the name of its registered agent set forth in the Fourth Amended and Restated Certificate of Incorporation of ICE (“Fourth Certificate”). Immediately thereafter, ICE intends to file with the Secretary of State of the State of Delaware the Fifth Amended and Restated Certificate of Incorporation of ICE (the “Fifth Certificate”), which will integrate the changes made by the Certificate of Change.

With respect to the change in the registered agent and registered office, in the Fifth Certificate, Article II would identify United Agent Group Inc. as the registered agent and provide that the address of the registered office in the State of Delaware, County of New Castle, is 3411 Silverside Road, Tatnall Building No. 104, Wilmington, Delaware 19810. Currently, Article II of the Fourth Certificate identifies 1209 Orange Street, Wilmington, Delaware 19801 as the address of the registered office in the State of Delaware, County of New Castle, and provides that the name of its registered agent at such address is The Corporation Trust Company.

#### Conforming Changes

The Exchange proposes to make technical conforming changes to the Fifth Certificate.

The General Corporation Law of the State of Delaware (“DGCL”) provides that the board of directors of a corporation may adopt a restated certificate of incorporation that integrates a certificate of incorporation and any prior amendments to such certificate of incorporation, such as the Certificate of Change.<sup>7</sup> Accordingly, the proposed second introductory paragraph would state that the Fifth Certificate restates and integrates, and does not further amend, the provisions of the Fourth Certificate, as amended by the Certificate of Change,

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<sup>6</sup> See Del. Code tit 8, §133.

<sup>7</sup> See Del. Code tit 8, §245(a).

and there is no discrepancy between them. Similarly, the fourth introductory paragraph would state that the Fourth Certificate was thereby restated and integrated to read as set forth in the Fifth Certificate. The proposed changes would delete a reference in the Fourth Certificate to the amendment of the Third Amended and Restated Certificate.

Pursuant to Section 245(b) of the DGCL, stockholder approval is not required for a restated certificate of incorporation that, like the proposed Fifth Certificate, restates and integrates but does not further amend the existing certificate of incorporation.<sup>8</sup> Accordingly, the proposed third and fourth introductory paragraphs would delete the references to Section 242 of the DGCL, as it refers to stockholder approval, which would not be required.<sup>9</sup>

References to the “Third Amended and Restated Certificate of Incorporation” and the “Fourth Amended and Restated Certificate of Incorporation” in the titles, introductory paragraphs, and signature lines would be changed to refer to the “Fourth Amended and Restated Certificate of Incorporation” and “Fifth Amended and Restated Certificate of Incorporation,” respectively.

Finally, the time and date of effectiveness and execution in the introductory certifications and signature line would be updated.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act<sup>10</sup> in general, and with Section 6(b)(1)<sup>11</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the

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<sup>8</sup> See Del. Code tit 8, §245(b).

<sup>9</sup> See Del. Code tit 8, §242.

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

<sup>11</sup> 15 U.S.C. 78f(b)(1).

Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change is a non-substantive administrative change that does not impact the governance or ownership of the Exchange. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because ensuring that the Fifth Certificate identifies the name of ICE's registered agent and address of ICE's registered office in the State of Delaware would contribute to the orderly operation of the Exchange by adding clarity and transparency to its rules. The proposed change would ensure that ICE continues to comply with Delaware requirements for corporations to have a registered agent and registered office in the State of Delaware. In addition, the proposed changes to the introductory paragraphs would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> 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

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<sup>12</sup> 15 U.S.C. 78f(b)(5).

market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules. The Exchange believes that, by ensuring that such rules accurately identify the name of ICE's registered agent and the address of ICE's registered office in the State of Delaware, the proposed rule change would reduce potential investor or market participant confusion. In addition, the proposed changes to the introductory paragraphs and the proposed conforming changes would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, reducing potential confusion that may result from having an incorrect description or reference in the Fifth Certificate.

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. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with making a technical change updating the registered office and registered agent of ICE and conforming changes.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(3)<sup>14</sup> thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>15</sup> of the Act to determine whether the proposed rule change should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2019-55 on the subject line.

#### Paper comments:

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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(3).

<sup>15</sup> 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSE-2019-55. 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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that



you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2019-55, 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>16</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).