

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-71721; File Nos. SR-NYSE-2014-04; SR-NYSEMKT-2014-10; SR-NYSEArca-2014-08)

March 13, 2014

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to a Corporate Action in which Its Indirect Parent, NYSE Euronext Holdings LLC, Will Become a Wholly-Owned Subsidiary of IntercontinentalExchange, Inc.

### I. Introduction

On January 17, 2014, each of New York Stock Exchange LLC (“Exchange”), NYSE MKT LLC (“NYSE MKT”), and NYSE Arca, Inc. (“NYSE Arca” and, with the Exchange and NYSE MKT, the “NYSE Exchanges”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> proposed rule changes in connection with the contribution by IntercontinentalExchange Group, Inc., a Delaware corporation (“ICE Group”), of its 100% membership interest in NYSE Euronext Holdings LLC, a Delaware limited liability company (“NYX Holdings”), which is an indirect owner of a 100% interest in the NYSE Exchanges, to IntercontinentalExchange, Inc. (“ICE Inc.”), another wholly-owned subsidiary of ICE Group, (the “Transfer”). The proposed rule changes were published for comment in the Federal Register on January 30, 2014.<sup>4</sup> The Commission did not receive any comment letters on the proposal.

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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 Nos. 71393 (January 24, 2014), 79 FR 4996 (January 30, 2014) (SR-NYSE-2014-04) (“Notice”); 71395 (January 24, 2014), 79 FR 5003 (January 30, 2014)(SR-NYSEMKT-2014-10); 71394 (January 24, 2014), 79 FR 4989 (January 30, 2014) (SR-NYSEArca-2014-08).

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act,<sup>6</sup> which, among other things, requires 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 more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. Section 6(b) of the Act<sup>7</sup> also requires that the rules of the 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.

## II. Discussion

The Exchange, NYSE MKT and NYSE Arca have submitted their proposed rule changes in connection with the transfer by ICE Group of all membership interests in NYX Holdings to ICE Inc.

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<sup>5</sup> In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> Id.

NYX Holdings owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (“NYSE Group”), which in turn directly or indirectly owns (1) 100% of the equity interest of the NYSE Exchanges and, (2) 100% of the equity interest of NYSE Market (DE), Inc. (“NYSE Market”), NYSE Regulation, Inc. (“NYSE Regulation”), NYSE Arca L.L.C., NYSE Arca Equities, Inc. (“NYSE Arca Equities”) and NYSE Amex Options LLC (“NYSE Amex Options”) (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca L.L.C., NYSE Arca Equities, NYSE Amex Options and any similar U.S. regulated entity acquired, owned or created after the date hereof, the “U.S. Regulated Subsidiaries” and each, a “U.S. Regulated Subsidiary”).

ICE Inc. is a wholly-owned subsidiary of ICE Group, a public company that is listed on the Exchange. NYSE Holdings is also a direct wholly-owned subsidiary of ICE Group. Following the Transfer, ICE Inc. will remain a direct wholly-owned subsidiary of ICE Group.

As a result of the Transfer, ICE Group will contribute the membership interests in NYX Holdings to ICE Inc., at which point NYX Holdings will become a wholly-owned subsidiary of ICE Inc., and the U.S. Regulated Subsidiaries owned by NYX Holdings will become indirect wholly-owned subsidiaries of ICE Inc. ICE Group will continue as the ultimate parent entity of NYX Holdings through ICE Inc. The proposed rule changes are necessary to effectuate the consummation of the Transfer and will not be operative until the date of the consummation of the Transfer (the “Closing Date”). The proposed rule changes and exhibits thereto contain modifications to the corporate governance documents of ICE Inc., NYX Holdings and ICE

Group<sup>8</sup> that reflect the current structure of the Transfer.<sup>9</sup>

Following the Transfer, ICE Group will continue to hold all of the equity interests in ICE Inc., and ICE Inc. will hold all the membership interests in NYX Holdings. NYX Holdings will continue to hold (1) 100% of the equity interests of NYSE Group (which, in turn, would continue to directly or indirectly hold 100% of the equity interests of the U.S. Regulated Subsidiaries) and

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<sup>8</sup> The NYSE Exchanges propose to add to the Amended and Restated Certificate of Incorporation of ICE Group (“ICE Group Certificate”) and the Second Amended and Restated Bylaws of ICE Group (“ICE Group Bylaws”) that directors of ICE Group must consider ICE Inc. and NYX Holdings when taking certain actions. Specifically, the provisions in the ICE Group Certificate establishing the standard for each director’s approval of ownership or voting rights in excess of the limitations in the ICE Group Certificate do not currently require a director to consider whether such approval would impair the ability of ICE Inc. and NYX Holdings to comply with the Exchange Act and the rules and regulations thereunder. See proposed ICE Group Bylaws, Section 3.15(g)(amending the definition of U.S. Regulated Subsidiary cross-referenced in the ICE Group Certificate to include NYX Holdings and ICE Inc.). Also, the provisions in the ICE Group Bylaws establishing the standards for the board’s approval of any action by ICE Group does not currently require a director to take into consideration the effect that such action would have on the ability of ICE Inc. and NYX Holdings (a) to engage in conduct that fosters and does not interfere with the ability of each such entity to prevent fraudulent and manipulative acts and practices in the securities markets; (b) to promote just and equitable principles of trade in the securities markets; (c) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (d) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (e) in general, to protect investors and the public interest. See proposed ICE Group Bylaws, Section 3.14(a)(3). The ICE Group Bylaws would be amended to add references to ICE Inc. and NYX Holdings in each such provision.

<sup>9</sup> The NYSE Exchanges propose to amend the Third Amended and Restated Limited Liability Company Agreement of NYX Holdings (“NYX Holdings Operating Agreement”) to reflect that ICE Inc. will be the sole member of the LLC as a result of ICE Group’s transfer of the membership interest in NYX Holdings to ICE Inc. and make additional nonsubstantive conforming changes. The NYX Holdings board adopted the resolutions in order to permit ICE Group to transfer its membership interest in NYX Holdings to ICE Inc. and to amend the NYX Holdings Operating Agreement to reflect the change of ownership in Exhibit 5D-1 to the Notice. The Commission notes that, if the Transfer is not consummated, the proposed rule changes will not become effective.

(2) 100% of the equity interest of Euronext N.V. (“Euronext”) (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom).

According to the NYSE Exchanges, the Transfer is part of the process pursuant to which ICE Group will prepare for the previously announced sale of the continental European cash equity platforms and the derivatives trading on them (the “Euronext Sale”) currently owned by Euronext. According to the NYSE Exchanges, the Transfer also will facilitate the transitioning of the derivatives businesses of another current subsidiary of Euronext, Liffe Administration and Management, to ICE Futures Europe, a subsidiary of ICE Inc., and will enable ICE Inc. to continue in compliance with certain debt covenants after the Euronext Sale.

The NYSE Exchanges represent that the Transfer will not affect the operation of the U.S. Regulated Subsidiaries. Other than as described herein, the NYSE Exchanges also represent that ICE Inc. will not make any changes to the regulated activities of the U.S. Regulated Subsidiaries in connection with the Transfer. If ICE Inc. determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission.

A. ICE Inc.

Following the Transfer, ICE Inc. will hold all of the equity interests in NYX Holdings, which in turn, directly or indirectly holds 100 percent of the equity interests of the U.S. Regulated Subsidiaries. Section 19(b) of the Act and Rule 19b-4 thereunder require a self-regulatory organization (“SRO”) to file proposed rule changes with the Commission. Although ICE Inc. is not an SRO, certain provisions of its proposed Fifth Amended and Restated Certificate of Incorporation (“ICE Inc. Certificate”) and proposed Second Amended and Restated

Bylaws (“ICE Inc. Bylaws”, and together with the ICE Inc. Certificate, “the ICE Inc. Articles”), along with other corporate documents, are rules of an exchange<sup>10</sup> if they are stated policies, practices, or interpretations, as defined in Rule 19b-4 under the Act, of the exchange, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b-4 thereunder. Accordingly, the NYSE Exchanges have filed the proposed ICE Inc. Articles, along with other corporate documents, with the Commission.

#### Voting and Ownership Limitations

The NYSE Exchanges propose that, effective as of the completion of the Transfer, the ICE Inc. Certificate would contain voting and ownership restrictions that are substantially identical to those currently in the ICE Group Certificate and the NYX Holdings Operating Agreement previously approved by the Commission.<sup>11</sup> These would restrict any person, either alone or together with its related persons, from having voting control over ICE Inc. shares entitling the holder thereof to cause more than 10% of the votes entitled to be cast on any matter, or beneficially owning ICE Inc. shares representing more than 20% of the outstanding votes that may be cast on any matter.<sup>12</sup> These limitations would apply in the event that ICE Group does

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<sup>10</sup> See Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If ICE Inc. decides to change the ICE Inc. Articles, ICE Inc. must submit such change to the board of directors of the U.S. Regulated Subsidiaries, and if any or all of such board of directors shall determine that such amendment must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. See proposed ICE Inc. Certificate, Article X; proposed ICE Inc. Bylaws, Section 11.3.

<sup>11</sup> See Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2010) (order approving proposed combination of NYSE Euronext and IntercontinentalExchange Group Inc.).

<sup>12</sup> See proposed ICE Inc. Certificate, Article V, Sections A.1. and B.1.

not own all of the issued and outstanding stock in ICE Inc.<sup>13</sup> and only for so long as ICE Inc. directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary.<sup>14</sup>

The ICE Inc. board of directors may waive the voting and ownership restrictions if it makes certain determinations and expressly resolves to permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Act and filed with, and approved by, each European Regulator having appropriate jurisdiction and authority.<sup>15</sup>

In addition, for so long as ICE Inc. directly or indirectly controls the Exchange, NYSE Market (DE), Inc., NYSE MKT, NYSE Arca, NYSE Arca Equities Inc. or any facility of NYSE Arca or NYSE MKT, the ICE Inc. board of directors cannot waive the voting and ownership limits above the 20% threshold for any person if such person or its related persons is a member of NYSE or NYSE MKT, an ETP Holder of NYSE Arca Equities<sup>16</sup>, or an OTP Holder or an OTP Firm of NYSE Arca.<sup>17</sup> Further, the ICE Inc. board of directors also cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act) (a “U.S. Disqualified Person”) or has been determined by a European Regulator to be in violation of laws or regulations adopted in accordance with the European Directive on Markets in Financial

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<sup>13</sup> See proposed ICE Inc. Certificate, Article V.

<sup>14</sup> See proposed ICE Inc. Certificate, Article V, Section A.1. and B.1.

<sup>15</sup> See proposed ICE Inc. Certificate, Article V, Section A.2. and B.2.

<sup>16</sup> “ETP Holder” is defined in NYSE Arca Equities Rule 1.1(m). “OTP Holder” and “OTP Firm” are defined, respectively, in NYSE Arca Rule 1.1(q) and 1.1(r).

<sup>17</sup> See proposed ICE Inc. Certificate, Article V, Section A.3(c) and B.3(d)-(f).

Instruments applicable to any European Market Subsidiary requiring such person to act fairly, honestly and professionally (a “European Disqualified Person”).<sup>18</sup>

The Commission finds the ownership and voting restrictions in the proposed ICE Inc. Articles are consistent with the Act.

B. NYX Holdings Resolutions

In order to allow ICE Inc. to wholly own and vote all of NYX Holdings’ membership interests upon consummation of the Transfer, ICE Inc. delivered a written notice to the board of directors of NYX Holdings pursuant to the procedures set forth in the NYX Holdings Operating Agreement requesting approval of its ownership and voting NYX Holdings membership interests in excess of the NYX Holdings voting restriction and NYX Holdings ownership restriction.<sup>19</sup>

The board of directors of NYX Holdings must resolve to expressly permit ownership or voting in excess of the NYX Holdings voting restriction limitation and NYX Holdings ownership restriction. Such resolution of the NYX Holdings board of directors must be filed with and approved by the Commission under Section 19(b) of the Act, and become effective thereunder. Further, the board of directors may not approve any voting or ownership in excess of the limitations unless it determines that such ownership or exercise of voting rights (i) will not impair the ability of the U.S. Regulated Subsidiaries, NYX Holdings, and NYSE Group to discharge their respective responsibilities under the Act and the rules and regulations thereunder, (ii) will not impair the ability of any European Market Subsidiary, NYX Holdings, or Euronext

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<sup>18</sup> See ICE Inc. Certificate, Article V Sections A.3(c)(i), A.3(d)(i) and B.3(c)(i) and (ii).

<sup>19</sup> Prior to permitting any person to exceed the ownership limitation and voting limitation, such person must deliver notice of such person’s intention to exceed the ownership limitation or voting limitation to the NYX Holdings board of directors. See NYX Holdings Operating Agreement, Article IX, Sections 9.1(a)(2) and (b)(2).



to discharge their respective responsibilities under the European Exchange Regulations, (iii) is otherwise in the best interests of NYX Holdings, its members, the U.S. Regulated Subsidiaries, and the European Market Subsidiaries, and (iv) will not impair the Commission's ability to enforce the Act or the European Regulators' ability to enforce the European Exchange Regulations.<sup>20</sup> For so long as NYX Holdings directly or indirectly controls the Exchange or NYSE Market, NYSE Arca, NYSE Arca Equities, any facility of NYSE Arca, or NYSE MKT, the NYX Holdings board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is a member of the Exchange or NYSE MKT, or an ETP Holder, an OTP Holder or an OTP Firm.<sup>21</sup> Further, the NYX Holdings board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is a U.S. Disqualified Person or a European Disqualified Person.<sup>22</sup>

The board of directors of NYX Holdings adopted by written consent resolutions to permit ICE Inc., either alone or with its related persons, to exceed the NYX Holdings ownership restriction and the NYX Holdings voting restriction. In adopting such resolutions, the board of directors of NYX Holdings made the necessary determinations set forth above and approved the submission of the proposed rule changes to the Commission. Among other things, in this notice, ICE Inc. represented to the board of directors of NYX Holdings that neither ICE Inc., nor any of its related persons, is (1) an NYSE Member; (2) an NYSE MKT Member; (3) an ETP Holder; (4) an OTP Holder or OTP Firm; or (5) a U.S. Disqualified Person or a European Disqualified

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<sup>20</sup> See NYX Holdings Operating Agreement, Article IX, Section 9.1(a)(3)(A)-(B) and Section 9.1(b)(3)(A)-(B).

<sup>21</sup> See NYX Holdings Operating Agreement, Article IX, Section 9.1(a)(3)(C).

<sup>22</sup> Id.

Person. The NYX Holdings board of directors also determined that ownership of NYX Holdings by ICE Inc. is in the best interests of NYX Holdings, the owners of its membership interests, the U.S. Regulated Subsidiaries, and the European Market Subsidiaries.<sup>23</sup>

The Commission believes it is consistent with the Act to allow ICE Inc. to wholly own and vote all of the membership interests of NYX Holdings. The Commission notes that ICE Inc. represents that neither ICE Inc. nor any of its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act), or is a member of the Exchange or NYSE MKT, an ETP Holder, an OTP Holder or an OTP Firm, or a European Disqualified Person. ICE Inc. has also included in its corporate documents certain provisions designed to maintain the independence of the U.S. Regulated Subsidiaries' self-regulatory functions from ICE Group, ICE Inc., NYX Holdings and NYSE Group.<sup>24</sup> Accordingly, the Commission believes that the acquisition of ownership and exercise of voting rights of NYX Holdings membership interests by ICE Inc. will not impair the ability of the Commission or any of the U.S. Regulated Subsidiaries to discharge their respective responsibilities under the Act.

C. Relationship of ICE Inc., NYX Holdings, NYSE Group, and the U.S. Regulated Subsidiaries; Jurisdiction over ICE Inc.

ICE Inc.'s activities with respect to the operation of any of the U.S. Regulated Subsidiaries must be consistent with, and not interfere with, the U.S. Regulated Subsidiaries' self-regulatory obligations. The proposed ICE Inc. corporate documents include certain

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<sup>23</sup> Such resolution of the NYX Holdings board of directors was filed as part of the proposed rule changes. See Exhibit E to each of the proposed rule changes, which exhibit is available on the Commission's website (<http://www.sec.gov/rules/sro.shtml>), at the Commission's Public Reference Room, at the NYSE, and on the NYSE's website (<http://www.nyse.com>).

<sup>24</sup> See infra note 29.

provisions that are designed to maintain the independence of the U.S. Regulated Subsidiaries' self-regulatory functions from ICE Inc., NYX Holdings, and NYSE Group, enable the U.S. Regulated Subsidiaries to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,<sup>25</sup> and facilitate the ability of the U.S. Regulated Subsidiaries and the Commission to fulfill their regulatory and oversight obligations under the Act.<sup>26</sup>

For example, under the proposed ICE Inc. Bylaws, ICE Inc. shall comply with the U.S. federal securities laws, the European Exchange Regulations, and the respective rules and regulations thereunder; shall cooperate with the Commission, the European Regulators, and the U.S. Regulated Subsidiaries.<sup>27</sup> Each director, officer, and employee of ICE Inc., to the extent in discharging his or her responsibilities shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with the U.S. Regulated Subsidiaries.<sup>28</sup> In addition, in discharging his or her responsibilities as a member of the board, each director of ICE Inc. must, to the fullest extent permitted by applicable law, take into consideration the effect that ICE Inc.'s actions would have on the ability of the U.S. Regulated Subsidiaries to carry out their responsibilities under the Act, on the ability of the European Market Subsidiaries to carry out their responsibilities under the European Exchange Regulations as operators of European Regulated Markets, and on the ability of the U.S. Regulated Subsidiaries, NYSE Group, and ICE Inc. (i) to engage in conduct that fosters and does

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<sup>25</sup> 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

<sup>26</sup> See proposed ICE Inc. Bylaws Article IX.

<sup>27</sup> See proposed ICE Inc. Bylaws, Article IX, Section 9.1 and 9.2.

<sup>28</sup> See proposed ICE Inc. Bylaws, Article III, Section 3.14(b).

not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, and ICE Inc. to prevent fraudulent and manipulative acts and practices in the securities markets; (ii) to promote just and equitable principles of trade in the securities markets; (iii) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (iv) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (v) in general, to protect investors and the public interest.<sup>29</sup> For so long as ICE Inc. directly or indirectly controls any U.S. Regulated Subsidiary, ICE Inc., its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries (to the extent of each U.S. Regulated Subsidiary's self-regulatory function) and the European Market Subsidiaries (to the extent of each European Market Subsidiaries' self-regulatory function).<sup>30</sup> Further, ICE Inc. agrees to keep confidential all confidential information pertaining to: (1) the self-regulatory function of the any U.S. Regulated Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of any of the U.S. Regulated Subsidiaries; and (2) the self-regulatory function of the European Market Subsidiaries under the European Exchange Regulations as operator of a European Regulated Market (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the European Market Subsidiaries, and not use such information for any

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<sup>29</sup> See proposed ICE Inc. Bylaws, Article III, Section 3.14(a)(3).

<sup>30</sup> See proposed ICE Inc. Bylaws, Article IX, Section 9.4 and 9.5.

commercial<sup>31</sup> purposes.<sup>32</sup>

In addition, ICE Inc.'s books and records shall be subject at all times to inspection and copying by the Commission, the European Regulators, any U.S. Regulated Subsidiary (provided that such books and records are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight) and any European Market Subsidiary (provided that such books and records are related to the operation or administration of such European Market Subsidiary or any European Regulated Market over which such European Market Subsidiary has regulatory authority or oversight).<sup>33</sup> The ICE Inc. Bylaws would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of ICE Inc. to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.<sup>34</sup> ICE Inc.'s books and records related to U.S. Regulated Subsidiaries shall be maintained within the United States, and ICE Inc.'s books and records related to European Market Subsidiaries shall be maintained in the home jurisdiction of one or more of the European Market Subsidiaries

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<sup>31</sup> The Commission believes that any non-regulatory use of such information would be for a commercial purpose. See, e.g., NYSE-Euronext Merger Order, supra note 20, 72 FR at 8041 n. 71.

<sup>32</sup> See proposed ICE Inc. Bylaws, Article VIII, Section 8.1.

<sup>33</sup> See proposed ICE Inc. Bylaws, Article VIII, Section 8.3.

<sup>34</sup> See proposed ICE Inc. Bylaws, Article VIII, Section 8.2.

or of any subsidiary of ICE Inc. in Europe.<sup>35</sup> The ICE Inc. Bylaws also provide that if and to the extent that any of ICE Inc.'s books and records may relate to both European Market Subsidiaries and U.S. Regulated Subsidiaries (each such book and record an "Overlapping Record"), ICE Inc. shall be entitled to maintain such books and records either in the home jurisdiction of one or more European Market Subsidiaries or in the United States.<sup>36</sup>

In addition, for so long as ICE Inc. directly or indirectly controls any U.S. Regulated Subsidiary, the books, records, premises, officers, directors, and employees of ICE Inc. shall be deemed to be the books, records, premises, officers, directors, and employees of the U.S. Regulated Subsidiaries for purposes of and subject to oversight pursuant to the Act, and for so long as ICE Inc. directly or indirectly controls any European Market Subsidiary, the books, records, premises, officers, directors, and employees of ICE Inc. shall be deemed to be the books, records, premises, officers, directors, and employees of such European Market Subsidiaries for purposes of and subject to oversight pursuant to the European Exchange Regulations.<sup>37</sup>

ICE Inc. and its directors and, to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, ICE Inc.'s officers and employees whose principal place of business and residence is outside of the United States irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission with respect to activities relating to the U.S. Regulated Subsidiaries,

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<sup>35</sup> See proposed ICE Inc. Bylaws, Article VIII, Sections 8.4 and 8.5.

<sup>36</sup> See proposed ICE Inc. Bylaws, Article VIII, Section 8.6.

<sup>37</sup> See proposed ICE Inc. Bylaws, Article VIII, Sections 8.4 and 8.5.

and to the jurisdiction of the European Regulators and European courts with respect to activities relating to the European Market Subsidiaries.<sup>38</sup>

The ICE Inc. Bylaws would provide that ICE Inc. will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of ICE Inc. to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.<sup>39</sup> Further, ICE Inc. acknowledges that it is responsible for referring possible rule violations to the NYSE Exchanges.

Finally, the proposed ICE Inc. Articles require that, for so long as ICE Inc. controls, directly or indirectly, any of the U.S. Regulated Subsidiaries, any changes to the proposed ICE Inc. Articles be submitted to the board of directors of such U.S. Regulated Subsidiaries, and if any such boards of directors determines that such amendment is required to be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act<sup>40</sup> and the rules thereunder, such change shall not be effective until filed with or filed with and approved by, the Commission.<sup>41</sup>

The Commission finds that these provisions are consistent with the Act, and that they are intended to assist the NYSE Exchanges in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act. With respect to the maintenance of books and records of ICE Inc., the Commission notes that while ICE Inc. has the discretion to

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<sup>38</sup> See proposed ICE Inc. Bylaws, Article VII, Sections 7.1 and 7.2.

<sup>39</sup> See proposed ICE Inc. Bylaws, Article IX, Section 9.3.

<sup>40</sup> 15 U.S.C. 78s.

<sup>41</sup> See proposed ICE Inc. Bylaws, Article XI, Section 11.3; proposed ICE Inc. Certificate, Article X(C).

maintain Overlapping Records in either the United States or the home jurisdiction of one or more of the European Market Subsidiaries, ICE Inc. is liable for any books and records it is required to produce for inspection and copying by the Commission that are created outside the United States and where the law of a foreign jurisdiction prohibits ICE Inc. from providing such books and records to the Commission for inspection and copying.<sup>42</sup> Moreover, the Commission notes that NYX Holdings is under an existing obligation to make its books and records available in compliance with the requirements of Rule 17a-1(b).<sup>43</sup>

Under Section 20(a) of the Act,<sup>44</sup> any person with a controlling interest in the U.S. Regulated Subsidiaries shall be jointly and severally liable with and to the same extent that the U.S. Regulated Subsidiaries are liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act<sup>45</sup> creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act<sup>46</sup> authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Act through an act or omission that the person knew

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<sup>42</sup> See Securities Exchange Act Release Nos. 55293 (February 14, 2007), 72 FR 8033, 8041 (February 22, 2007) (SR-NYSE-2006-120).

<sup>43</sup> The Commission notes that the obligations of NYSE Euronext established in the prior orders remains in effect for its successors entity, i.e., NYX Holdings. NYX Holdings is currently required to maintain in the United States originals or copies of books and records that relate to both the U.S. Regulated Subsidiaries and its European market subsidiaries covered by Rule 17a-1(b) promptly after creation of such books and records. See *id.*, 72 FR 8041, 8042

<sup>44</sup> 15 U.S.C. 78t(a).

<sup>45</sup> 15 U.S.C. 78t(e).

<sup>46</sup> 15 U.S.C. 78u-3.



or should have known would contribute to the violation. These provisions are applicable to ICE Inc.'s dealings with the U.S. Regulated Subsidiaries.

### III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change 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 Act<sup>47</sup> that the proposed rule changes (SR-NYSE-2014-04; SR-NYSEMKT-2014-10; SR-NYSEArca-2014-08), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>48</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>47</sup> Id.

<sup>48</sup> 17 CFR 200.30-3(a)(12).