

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95129; File No. SR-NYSEArca-2022-35)

June 21, 2022

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Certificate of Incorporation and Bylaws of Its Ultimate Parent Company, Intercontinental Exchange, Inc.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 15, 2022, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 proposes to amend the certificate of incorporation and bylaws of its ultimate parent company, Intercontinental Exchange, Inc. (“ICE”), to (a) eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, (b) provide that special meetings of ICE’s stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE’s common stock, and (c) make certain non-substantive and conforming changes. The proposed rule change is available on the Exchange’s website at 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

The Exchange proposes to amend ICE's Fifth Amended and Restated Certificate of Incorporation (the "ICE Certificate") and Eighth Amended and Restated Bylaws (the "ICE Bylaws") to (a) eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make certain non-substantive and conforming changes.

The Exchange proposes that the amendments would be effective upon the amended ICE Certificate being filed with the Secretary of State of the State of Delaware.

Eliminating Supermajority Voting Provisions

Certain of the amendments to the ICE Certificate would eliminate the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws. The changes are proposed in response to the receipt of a stockholder proposal on October 24, 2020 that was approved at ICE's Annual Stockholder Meeting on May 14, 2021. The changes subsequently were approved by the ICE Board of Directors on March 4, 2022, and by the ICE stockholders on May 13, 2022, in each case subject to filing with the Securities and Exchange Commission ("Commission").

Under the current ICE Certificate, no adoption, amendment or repeal of any Bylaw by action of stockholders may be effective unless approved by the affirmative vote of holders of not less than 66 2/3% of the outstanding shares of common stock entitled to vote thereon. The proposed changes would amend the ICE Certificate to eliminate this requirement. Instead, the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to adopt, amend or repeal any bylaw by action of stockholders. Article XI, Section 11.3 of the ICE Bylaws would continue to require that, so long as ICE directly or indirectly controls a national securities exchange, before any amendment or repeal of any provision of the ICE Bylaws may be effectuated, it shall be either (i) filed with or filed with and approved by the Commission, or (ii) submitted to the exchanges' boards of directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission.

The current ICE Certificate also provides that the affirmative vote of holders of not less than 66 2/3% of the outstanding shares of common stock entitled to vote thereon is required in order to amend or repeal Article V, (Limitations on Voting and Ownership), Article VI, Sections B (Number of Directors) or G (Considerations of the Board of Directors), Article IX (Stockholder Action), or Article X (Amendments), Clause (A). As a result of the proposed changes, in accordance with the General Corporation Law of the State of Delaware ("DGCL"), the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to amend the ICE Certificate.⁴ Article X would continue to provide that, so long as ICE directly or indirectly controls a national securities exchange, any amendment or repeal of any provision of the ICE Certificate shall be submitted to the exchanges' boards of

⁴ See Del. Code tit 8, §242(b). The DGCL does not require a stockholder vote to change the corporate name or delete specific obsolete text. See *id.* and §242(a)(1) and (7).

directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission before such amendment or repeal may be effectuated.

To implement the change, the Exchange proposes to make the following amendments to the ICE Certificate:

- The first sentence of Article IX, Section C (Bylaws), would be revised as follows (proposed text underlined, proposed deletion bracketed):

No adoption, amendment or repeal of a bylaw by action of stockholders shall be effective unless approved by the affirmative vote of the holders of [not less than 66 2/3%, or such higher percentage as may be specified in Section 11.2(b) of the bylaws of the Corporation,] a majority of the voting power of all outstanding shares of Common Stock and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class.

- Clause (A) would be deleted from the second sentence of Article X. The last sentence of the provision also would be deleted, since a vote of stockholders would no longer be required under the article as a result of the removal of Clause (A). The amended article would read as follows (proposed deletion bracketed):

Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, [(A) no provision of ARTICLE V, Section B or G of ARTICLE VI, ARTICLE IX or this clause (A) of ARTICLE X shall be amended, modified or repealed, and no provision inconsistent with any such provision shall become part of this Amended and Restated

Certificate of Incorporation, unless such matter is approved by the affirmative vote of the holders of not less than 66 2/3% of the voting power of all outstanding shares of Common Stock of the Corporation and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class; and (B)] for so long as this Corporation shall control, directly or indirectly, any Exchange, before any amendment or repeal of any provision of the Certificate of Incorporation of this Corporation shall be effective, such amendment or repeal shall be submitted to the boards of directors of each Exchange (or the boards of directors of their successors), and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be. [Any vote of stockholders required by this ARTICLE X shall be in addition to any other vote of the stockholders that may be required by law, this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation, any agreement with a national securities exchange or otherwise.]

Calling Special Meetings

Under the current ICE Certificate and ICE Bylaws, holders of 50% of the outstanding

shares of ICE common stock are entitled to call special meetings of stockholders so long as they satisfy certain procedural requirements. Stockholders are permitted to aggregate their holdings to reach the special meeting threshold and there is no aggregation cap or minimum duration of ownership requirement.

The proposed amendments to the ICE Certificate would change that requirement. The ICE Certificate would provide that special meetings of stockholders may be called at any time at the request of stockholders of record, so long as such stockholders hold at least 20% of the outstanding shares of ICE's common stock. The revised text would provide that the secretary of ICE would call the meeting only if they received a written request and the requesting stockholder complied with the requirements set forth in the relevant section of the ICE Certificate and ICE Bylaws as well as applicable law. Finally, that the final requirement applies to all four clauses would be clarified.

To implement the change, the Exchange proposes to amend Article VI, Section E (Power to Call Stockholder Meetings) of the ICE Certificate as follows (proposed text underlined, proposed deletions bracketed):

Special meetings of stockholders of the Corporation may be called at any time by, but only by, (1) the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors then in office, (2) the Chair[man] of the Board of Directors, (3) the Chief Executive Officer of the Corporation or (4) [request of holders]the secretary of the Corporation (the "Secretary") upon the receipt by the Secretary of a written request (a "Special Meeting Request") by one or more stockholders of record holding as of the date of the Secretary's receipt of the Special Meeting Request shares of Common Stock ("Requesting

Stockholder”) representing in the aggregate at least [~~50~~20% of the shares of Common Stock outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of ARTICLE V; provided that a special meeting of stockholders requested by a Requesting Stockholder (a “Stockholder Requested Special Meeting”) shall be called by the Secretary only if such Requesting Stockholder complies with this Section E of ARTICLE VI, the bylaws of the Corporation and applicable law, in each case of clauses (1) through (4), to be held at such date, time and place, if any, either within or without the State of Delaware as may be stated in the notice of the meeting.

Because the special meeting provision in the ICE Bylaws likewise provides for a 50% ownership threshold, the ICE Bylaws would also be amended to lower the special meeting ownership threshold to 20%. Article II, Section 2.5 would be amended to set forth the procedures for calling a special meeting. The first paragraph would set forth the percentage threshold and timing of an e-mail or mailed request. The remainder of Section 2.5 would set forth the informational requirements for a stockholder to request a special meeting, as well as procedural safeguards (such as ensuring that special meetings are called for lawful and appropriate purposes). It also would set forth the procedures for revoking a meeting request, whether by the requesting stockholder or the board of directors, what business may be transacted at the meeting, and what body will determine that the requesting stockholder has complied with the requirements of the section.

The specific changes would be as follows (proposed text underlined, proposed deletions bracketed):

2.5 Special meetings of the stockholders, for any purpose or purposes,

unless otherwise prescribed by statute or by the certificate of incorporation, may be called at any time by the Board of Directors, the Chair[man] of the Board, if any, or the Chief Executive Officer, or [at the request of holders of Common Stock] the secretary of the Corporation (the “Secretary”) upon the receipt by the Secretary by e-mail (with confirmation of receipt) or by registered mail addressed to the Secretary at the principal executive offices of the Corporation (“Acceptable Delivery Method”) of a written request (a “Special Meeting Request”) by one or more stockholders of record holding as of the date of the Secretary’s receipt of the Special Meeting Request shares of the Corporation’s common stock representing in the aggregate at least [50]20% (the “Special Meeting Requisite Percentage”) of the shares of the Corporation’s common stock[Common Stock] outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of Article V of the certificate of incorporation[. Such request shall state the purpose or purposes of the proposed meeting.]; provided that a special meeting of stockholders requested by a Requesting Stockholder (a “Stockholder Requested Special Meeting”) shall be called by the Secretary only if (i) such Requesting Stockholder complies with this Section 2.5, Section E of Article VI of the certificate of incorporation, and applicable law; (ii) such Requesting Stockholder continues to own the Special Meeting Requisite Percentage at all times between the date of the Special Meeting Request and the Stockholder Requested Special Meeting; and (iii) the Special Meeting Request complies with this Section 2.5. The date of any Stockholder Requested Special Meeting shall be no later than 90 days after the date that a Special Meeting Request that satisfies

the requirements of this Section 2.5 is received by the Secretary (or, in the case of any litigation related to the validity of the Special Meeting Request, 90 days after the final, non-appealable resolution of such litigation).

(a) To be in proper form, a Special Meeting Request shall:

(i) bear the signature and the date of signature of the Requesting Stockholder and (A) in the case of any Requesting Stockholder that is a stockholder of record, set forth the name and address of such Requesting Stockholder as they appear in the Corporation's books and (B) in the case of any Requesting Stockholder that is a beneficial owner, set forth the name and the valid and current address of such Requesting Stockholder;

(ii) set forth a statement of the specific purpose or purposes of such Requesting Stockholder and the matters proposed to be acted on at such Stockholder Requested Special Meeting;

(iii) set forth the calculation of such Requesting Stockholder's shares of capital stock of the Corporation, including the number of shares owned beneficially and of record and disclosure of any short interests, derivative instruments, voting agreements or arrangements or other arrangements that impact the calculation thereof;

(iv) include an agreement by such Requesting Stockholder to notify the Corporation immediately in the case of any reduction prior to the record date for the Stockholder Requested Special Meeting of any shares of capital stock owned beneficially or of record by such Requesting

Stockholder and an acknowledgement by such Requesting Stockholder that any such reduction shall be deemed a revocation of such Special Meeting Request to the extent of such reduction, such that the number of shares so reduced shall not be included in determining whether the Special Meeting Requisite Percentage has been reached and maintained; and

(v) include documentary evidence that such Requesting Stockholder own beneficially in the aggregate not less than the Special Meeting Requisite Percentage as of the date of such Special Meeting Request.

(b) Any Requesting Stockholder may revoke his, her or its Special Meeting Request at any time prior to the commencement of the applicable Stockholder Requested Special Meeting by revocation received by the Secretary in accordance with an Acceptable Delivery Method. If, following such revocation at any time before the commencement of such Stockholder Requested Special Meeting (including any revocation resulting from a reduction of shares), the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting. The first date on which valid Special Meeting Requests constituting not less than the Special Meeting Requisite Percentage shall have been received by the Corporation is referred to herein as the “Special Meeting Request Receipt Date”.

(c) The Corporation will provide each Requesting Stockholder with

notice of the record date for the determination of stockholders entitled to vote at the Stockholder Requested Special Meeting. Each Requesting Stockholder shall update the notice delivered and information previously provided to the Corporation pursuant to this Section 2.5, if necessary, so that the information provided or required to be provided in such notice shall continue to be true and correct (i) as of the record date for the Stockholder Requested Special Meeting and (ii) as of the date of the Stockholder Requested Special Meeting (or any adjournment, recess or postponement thereof), and such update shall be received by the Secretary in accordance with an Acceptable Delivery Method not later than five business days after the record date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the record date) and not later than the date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the date of such Stockholder Requested Special Meeting or any adjournment, recess or postponement thereof). If, pursuant to such update, the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting.

(d) In determining whether a Stockholder Requested Special Meeting has been requested by the record holders of shares representing in the aggregate at least the Special Meeting Requisite Percentage, multiple Special Meeting Requests received by the Secretary will be considered together only if each such

Special Meeting Requests (i) identify identical or substantially similar items to be acted on at the Stockholder Requested Special Meeting as determined in good faith by the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose) (“Special Meeting Similar Items”) and (ii) have been dated and received by the Secretary within 60 days of the earliest date of such Special Meeting Requests. If the record holder is not the signatory to the Special Meeting Request, such Special Meeting Request will not be valid unless documentary evidence is supplied to the Secretary at the time of delivery of such Special Meeting Request of such signatory’s authority to execute the Special Meeting Request on behalf of the record holder.

(e) Notwithstanding anything to the contrary, the Corporation shall not be required to convene a Stockholder Requested Special Meeting if:

(i) the demand for such special meeting does not comply with this Section 2.5;

(ii) the request relates to an item of business that is not a proper subject for action by a Requesting Stockholder under applicable law, rule or regulation;

(iii) the request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law;

(iv) the Special Meeting Request Receipt Date is during the period commencing 90 days prior to the first anniversary of the date of the preceding annual meeting of stockholders and ending on the date that is 30 days after the next annual meeting of stockholders;

(v) the item specified in the Special Meeting Request is not the election of directors and a Special Meeting Similar Item was presented at any meeting of stockholders held within 12 months prior to the Special Meeting Request Receipt Date;

(vi) a Special Meeting Similar Item consisting of the election or removal of directors was presented at any meeting of stockholders held not more than 90 days before the Special Meeting Request Receipt Date (and, for purposes of this clause, the election or removal of directors shall be deemed a “Special Meeting Similar Item” with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors); or

(vii) a Special Meeting Similar Item is included in the Corporation’s notice as an item of business to be brought before a meeting of stockholders that is called for a date within 90 days after the Special Meeting Request Receipt Date.

(f) Business transacted at any Stockholder Requested Special Meeting shall be limited to (i) the purpose(s) stated in any valid Special Meeting Request received from the Requesting Stockholders and (ii) any additional matters that the Board of Directors determines to include in the Corporation’s notice of the Stockholder Requested Special Meeting. If none of the Requesting Stockholders who submitted the Special Meeting Request appears or sends a qualified

representative to present the matters to be presented for consideration that were specified in the Special Meeting Request, the Corporation need not present such matters for a vote at such Stockholder Requested Special Meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(g) Compliance by a Requesting Stockholder with the requirements of this Section 2.5 shall be determined in good faith by the Board of Directors (or, to the extent expressly provided in this Section 2.5, any person to whom the Board of Directors has expressly delegated authority for such purpose).

Additional Changes

The Exchange proposes to make certain non-substantive and conforming changes to the ICE Certificate and ICE Bylaws.

ICE Certificate

The DGCL provides that a certificate of incorporation shall be proposed by the directors and adopted by the stockholders if it restates the certificate, integrates any prior amendments, and makes amendments.⁵ Accordingly, the second introductory paragraph of the ICE Certificate would state that the Sixth Amended and Restated Certificate of Incorporation (“Sixth Certificate”) restates, integrates, and further amends the provisions of the existing ICE Certificate, the Fifth Amended and Restated Certificate of Incorporation. Obsolete text stating that there was no discrepancy between the text of the current ICE Certificate and the Fourth Amended and Restated Certificates of Incorporation would be deleted. Similarly, the fourth introductory paragraph would state that the ICE Certificate was restated and integrated to read as

⁵ See Del. Code tit 8, §245(b).

set forth in the Sixth Certificate.

The Exchange proposes the following additional non-substantive and conforming changes:

- The proposed third and fourth introductory paragraphs would add references to Section 242 of the DGCL. Section 242 sets forth the manner that stockholder approval is effected.⁶
- References to the “Fifth 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 “Sixth Amended and Restated Certificate of Incorporation” and “Fifth Amended and Restated Certificate of Incorporation,” respectively.
- The time and date of effectiveness and execution in the introductory certifications and signature line would be updated.
- “Chairman” would be updated to “Chair” in Article VI, Section E.

ICE Bylaws

The Exchange proposes the following non-substantive and conforming changes:

- References to the “Eighth Amended and Restated Bylaws” would be updated to refer to the “Ninth Amended and Restated Bylaws.”
- The date of effectiveness would be updated.
- “Chairman” would be updated to “Chair” in Sections 2.5, 2.9, 2.11, 2.13(f), 3.6(b), 3.8 and 5.1. A reference to “chairman” would be updated to refer to “chair” in Section 2.15(a).

⁶ See Del. Code tit 8, §242.

- To clarify that the notice of a special meeting referenced in Section 2.6 would be given by the Corporation, the text “by the Corporation” would be added to the first sentence, between “shall be given” and “not fewer than.”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act⁷ in general, and with Section 6(b)(1)⁸ 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 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 Exchange believes that eliminating the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the 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, because the proposed change would affect the operations of the Exchange’s ultimate parent, not the Exchange itself, and would retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required, enabling the Exchange to continue to comply with the Exchange Act. The proposed change is designed to strengthen stockholder participation rights by allowing stockholders to amend the ICE Certificate and ICE Bylaws with simple

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

majority voting.⁹

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the 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 would affect the operations of the Exchange's ultimate parent and would not impact the governance or ownership of the Exchange. The proposed change would reduce the ownership threshold for special meetings of ICE stockholders, promoting stockholder engagement and participation.¹⁰ At the same time, Proposed Section 2.5 of the ICE Bylaws would provide comprehensive guidance regarding any stockholder requested special meeting, setting forth the percentage threshold; required timing of an e-mail or mailed stockholder request; informational requirements; procedural safeguards; procedures for revoking a meeting request; what business may be transacted at a meeting; and what body will determine that the requesting stockholder has complied with the requirements.

The proposed non-substantive and conforming changes 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 the proposed changes would ensure that the ICE

⁹ The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a majority vote for any amendment at a meeting of stockholders. See Article XI, Section 11.1 of the By-laws of Nasdaq, Inc.

¹⁰ The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a special meeting of stockholders be called following the request by stockholders holding at least 15% of the outstanding stock entitled to vote on the matter. See id., Article III, Section 3.2.

Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency. The additional proposed non-substantive and conforming changes to the ICE Certificate and ICE Bylaws would similarly provide clarity and transparency by updating the documents.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Exchange Act¹¹ because the proposed rule change would be consistent with and would create a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and 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.

The Exchange believes that the proposed change to eliminate the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, as stockholders and other stakeholders may view supermajority voting provisions as conflicting with principles of good corporate governance. The elimination of supermajority voting provisions in the ICE constituent documents may increase board accountability to stockholders and provide stockholders with greater ability to participate in the corporate governance of ICE. At the same time, existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining

¹¹ 15 U.S.C. 78f(b)(5).

Commission approval where required would not be amended, continuing the protection of investors and the public interest.

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because it would facilitate stockholder engagement while maintaining procedural safeguards against corporate waste, disruption and abuse by a small minority of stockholders. The Exchange believes that a 20% ownership threshold will help to ensure that special meetings are reserved for those extraordinary matters on which immediate action is deemed necessary by an appropriately large set of ICE's stockholders.

At the same time, by providing comprehensive guidance regarding any requested special meeting, the Exchange believes that the proposed change would perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because the changes would provide clarity and transparency regarding the applicable requirements and which actors have authority to act under proposed Section 2.5 of the ICE Bylaws, allowing market participants to more easily understand and comply with the ICE Bylaws.

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 the proposed changes would ensure that the ICE Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law. Similarly, the additional proposed non-

substantive and conforming changes to the ICE Certificate and ICE Bylaws would provide clarity and transparency by updating the documents. The Exchange believes that the changes would thereby reduce potential confusion that may result from having an incorrect description or reference in the ICE Certificate or ICE Bylaws.

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 or to amend the governing documents of the Exchange, but rather to (a) eliminate the supermajority voting provisions in for amending the ICE Certificate and ICE Bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make non-substantive and conforming changes. The proposed rule change does not impact the governance or ownership of the Exchange. It would not amend existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required. The Exchange believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that it may become operative immediately upon filing to allow ICE to implement the proposed changes as soon as possible. The Commission notes that the proposed changes would affect the operations of the Exchange's ultimate parent, not the Exchange itself, and would not impact the

¹² 15 U.S.C. 78(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

governance, ownership and regulation of the Exchange. Further, the proposed changes retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required.¹⁸ Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹⁹

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 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 will institute proceedings 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

¹⁸ See Article X of the ICE Certificate and Article XI, Section 11.3, of the ICE Bylaws.

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2022-35 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.

All submissions should refer to File Number SR-NYSEArca-2022-35. 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, D.C. 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. 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-NYSEArca-2022-35 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12), (59).