

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73372; File No. SR-NYSEMKT-2014-83)

October 16, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change in Connection with the Proposed Termination of the Amended and Restated Trust Agreement, dated as of November 13, 2013 and Amended on June 2, 2014 by and Among NYSE Holdings LLC, a Delaware Limited Liability Company, NYSE Group, Inc., a Delaware Corporation, Wilmington Trust Company, as Delaware Trustee, and each of Jacques de Larosière de Champfeu, Alan Trager and John Shepard Reed, as Trustees

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 8, 2014, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “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 this rule filing in connection with the proposed termination of the Amended and Restated Trust Agreement, dated as of November 13, 2013 and amended on June 2, 2014 (the “Trust Agreement”), by and among NYSE Holdings LLC, a Delaware limited liability company (“NYSE Holdings”), NYSE Group, Inc., a Delaware corporation (“NYSE Group”), Wilmington Trust Company, as Delaware Trustee, and each of Jacques de Larosière de Champfeu, Alan Trager and John Shepard Reed, as Trustees. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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

NYSE MKT seeks approval for its 100% direct parent, NYSE Group, and its 100% indirect parent, NYSE Holdings, to terminate the Trust Agreement.⁴ NYSE MKT believes that the regulatory considerations that led to the implementation of the Trust Agreement in 2007 are now moot as a result of the sale by Intercontinental Exchange, Inc., a Delaware corporation

⁴ ICE, a public company listed on the New York Stock Exchange, LLC (the "NYSE"), owns 100% of Intercontinental Exchange Holdings, Inc., a Delaware corporation ("ICE Holdings"), which in turn owns 100% of NYSE Holdings. Through ICE Holdings, NYSE Holdings and NYSE Group, ICE indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the "NYSE Exchanges") – the Exchange, NYSE Arca, Inc. ("NYSE Arca") and the NYSE – 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. and NYSE Amex Options LLC. See Exchange Act Release No. 70210 (August 15, 2013) (SR-NYSEMKT-2013-50), 78 FR 51758 (August 21, 2013) (approving proposed rule change relating to a corporate transaction in which NYSE Euronext will become a wholly owned subsidiary of IntercontinentalExchange Group, Inc.).

(“ICE”), of Euronext N.V. (“Euronext”) in June 2014 and certain changes in the corporate governance of ICE, ICE Holdings and NYSE Holdings that occurred upon such sale.⁵

Background

In 2007, NYSE Group, which is the 100% owner of NYSE MKT, combined with Euronext (the “Combination”). The new parent company formed in the Combination, NYSE Euronext, operated several regulated entities in the United States and various jurisdictions in Europe. In the Commission’s notice relating to the proposed Combination, NYSE MKT emphasized the importance of continuing to regulate marketplaces locally:

A core aspect of the structure of the Combination is continued local regulation of the marketplaces. Accordingly, the Combination is premised on the notion that . . . [c]ompanies listing their securities only on markets operated by Euronext and its subsidiaries will not become newly subject to U.S. laws or regulation by the SEC as a result of the Combination, and companies listing their securities only on the Exchange or NYSE Arca, will not become newly subject to European rules or regulation as a result of the Combination.⁶

In connection with obtaining regulatory approval of the Combination, NYSE Euronext implemented certain special arrangements consisting of two standby structures, one involving a Dutch foundation (Stichting) and one involving a Delaware trust. The Dutch foundation was empowered to take actions to mitigate the effects of any material adverse change in U.S. law that had an “extraterritorial” impact on non-U.S. issuers listed on Euronext markets, non-U.S.

⁵ The Exchange’s affiliates, the NYSE and NYSE Arca, have also submitted the same proposed rule change to terminate the Trust Agreement. See SR-NYSEArca-2014-112 and SR-NYSE-2014-53.

⁶ See Exchange Act Release No. 55026 (Dec. 29, 2006) (SR-NYSE-2006-120), 72 FR 814, 816-817 (January 8, 2007) (the “NYSE Euronext Notice”). NYSE Euronext acquired NYSE MKT in 2008.

financial services firms that were members of Euronext markets or holders of exchange licenses with respect to the Euronext markets. The Delaware trust was empowered to take actions to mitigate the effects of any material adverse change in European law that had an “extraterritorial” impact on the non-European issuers listed on NYSE Group securities exchanges, non-European financial services firms that were members of any NYSE Group securities market or holders of exchange licenses with respect to the NYSE Group securities exchanges.

The current form of the Trust Agreement is attached as Exhibit 5A, and a form of unanimous written consent of all parties to, or otherwise bound by, the Trust Agreement resolving that the Delaware trust be terminated is attached as Exhibit 5B. The terms of the Dutch foundation and the Delaware trust are complex. An explanation of the terms is included in the NYSE Euronext Notice. Subsequent modifications to the arrangements, to the extent relevant to the proposed rule change, are described herein. The Dutch foundation and the Delaware trust remained in effect after the merger of ICE Holdings (then known as IntercontinentalExchange, Inc.) and NYSE Euronext in 2013 under ICE (then known as IntercontinentalExchange Group, Inc.) as a new public holding company. However, in connection with ICE’s announced plan to sell the Euronext securities exchanges in an initial public offering, the Dutch Ministry of Finance permitted modifications of the terms of the governing document of the Dutch foundation under which the powers of the Dutch foundation would cease to apply to ICE and its affiliates at such time as ICE ceased to hold a “controlling interest” in Euronext, with “controlling interest” defined by reference to the definition of “control” under Rule 10 of the International Financial Reporting Standards (“IFRS 10”).⁷ In June 2014 ICE announced that it had sold all but

⁷ Excerpts from the Further Amended and Restated Governance and Option Agreement, dated March 21, 2014, among the Dutch foundation, Euronext Group N.V. and ICE are attached as Exhibit 5C.

approximately 6% of the ownership interest in Euronext in an underwritten public offering outside the United States.⁸ Upon application by ICE, the Dutch Ministry of Finance confirmed on July 16, 2014 that the conditions to the cessation of the application of the Dutch foundation to ICE had been satisfied or waived.⁹ As a result, ICE and its subsidiaries are no longer subject to the provisions of the Dutch foundation.

In the 2013 merger, NYSE Euronext was succeeded by the entity now known as NYSE Holdings, which is currently a party to the Trust Agreement. At that time, references to the nominating and governance committee of the board of directors of NYSE Euronext, which selected the Trustees of the Delaware trust, were replaced by references to the nominating and governance committee of the board of directors of ICE.¹⁰ Other provisions of the Trust Agreement are substantially unchanged.¹¹

In connection with the Combination of NYSE Group and Euronext in 2007 and the establishment of the Dutch foundation and the Delaware trust, the Certificate of Incorporation and Bylaws of NYSE Euronext included several provisions relating to representation of European interests on the board of directors and other provisions requiring the board to give due consideration to European regulatory requirements and the interests of identified categories of European stakeholders. These provisions are summarized in the NYSE Euronext Notice. Each

⁸ ICE's press release dated June 24, 2014 is available at the following link: <http://ir.theice.com/investors-and-media/press/press-releases/press-release-details/2014/Intercontinental-Exchange-Announces-Closing-of-Euronext-Initial-Public-Offering/default.aspx>.

⁹ An English translation of the Dutch Ministry of Finance's letter is attached as Exhibit 5D.

¹⁰ See note 4, *supra*.

¹¹ See Exchange Act Release No. 72158 (May 13, 2014) (SR-NYSE-2014-23), 79 FR 28784 (May 19, 2014) (notice of filing and immediate effectiveness of proposed rule change relating to name changes of the Exchange's ultimate parent) (revising Trust Agreement to reflect name changes of ICE and ICE Holdings).

such provision was subject to automatic revocation in the event that NYSE Euronext no longer held a controlling interest in Euronext or certain of its subsidiaries. For this purpose, “controlling interest” was defined to mean 50% or more of the outstanding shares of each class of voting securities and of the combined voting power of outstanding voting securities entitled to vote generally in the election of directors. Substantially identical provisions were added to the Certificate of Incorporation and Bylaws of ICE and ICE Holdings, and were retained in the Operating Agreement of NYSE Holdings, when ICE acquired NYSE Euronext in 2013, except that the “controlling interest” test was modified to become a “control” test under IFRS 10, as described above with respect to the Dutch foundation. As a result of the initial public offering of Euronext, ICE has established that it no longer controls Euronext within the meaning of IFRS 10, and the provisions of the constituent documents of ICE, ICE Holdings and NYSE Holdings have automatically and without further action become void and are of no further force and effect.

Proposed Rule Change

NYSE MKT requests approval to terminate the Delaware trust because it believes that the regulatory considerations that led to the implementation of the Trust Agreement in 2007 have been mooted by the sale of Euronext in June 2014, the automatic revocation of corporate governance provisions applicable to ICE, ICE Holdings and NYSE Holdings that occurred upon such sale, and the fact that the Dutch which functioned as a European analog to the Delaware trust, ceased to have any authority over ICE and its subsidiaries upon the closing of the sale of Euronext.¹² NYSE MKT believes that the prospect for any material adverse change in European law that would have an “extraterritorial” impact on the non-European issuers listed on NYSE Group securities exchanges, non-European financial services firms that are members of any

¹² As noted above, this has been confirmed by the Dutch Ministry of Finance.

NYSE Group securities market or holders of exchange licenses with respect to the NYSE Group securities exchanges is now remote.

Continuance of the Trust Agreement when it no longer furthers the purposes of Section 6(b) of the Exchange Act¹³ also imposes certain administrative burdens and costs upon NYSE MKT and its affiliates, and may cause investor uncertainty, that create impediments to a free and open market. Specifically, the Trust Agreement imposes administrative burdens on ICE and the nominating and governance committee of its board of directors, such as the need to periodically consider and vote on Trustees; the need to consider whether any proposed action requires approval under the Trust Agreement and, if so, the obligation to prepare materials for consideration and vote by the Trustees; and the need to consider whether any proposed action requires an amendment to the Trust Agreement and, if so, the additional obligation to submit such amendment to the Commission for approval under Rule 19b-4.¹⁴ The Trust Agreement results in out-of-pocket costs to NYSE MKT and its affiliates including the fees of the individual Trustees and the Delaware Trustee as well as fees of counsel incurred in connection with review of proposed amendments and assistance with the SEC approval process. NYSE MKT also believes that some analysts and institutional investors may not fully understand the purpose of the Delaware trust and may not have appreciated that, even when ICE controlled Euronext and European regulatory considerations played a substantial role in ICE's corporate governance, the likelihood of the Delaware trust's substantive provisions ever being invoked was, by design, extremely remote. In light of the sale of Euronext, the revocation of the governance provisions relating to European considerations, and the cessation of application of the Dutch foundation to ICE and its affiliates, ICE believes it is appropriate to terminate the Delaware trust in order to

¹³ 15 U.S.C. 78f(b).

¹⁴ 17 CFR 240.19b-4.

avoid any future need to reassure analysts and investors that the trust does not impact the daily operations or valuations of ICE's national securities exchanges.

Termination of the Delaware trust would be implemented through a unanimous written consent of all parties to, or otherwise bound by, the Trust Agreement in the form attached as Exhibit 5B.

References to the Delaware trust also would be deleted from, and related conforming changes would be made to, the constituent documents of NYSE Holdings, NYSE Group, NYSE MKT, the Exchange, NYSE Market and NYSE Regulation. In particular:

NYSE Holdings. The Fifth Amended and Restated Limited Liability Company Agreement of NYSE Holdings would be further amended and restated to eliminate the definition of the term "Trust" in Section 1.1 and the references to the Delaware trust in Section 7.2. See Exhibit 5E.

NYSE Group. The Third Amended and Restated Certificate of Incorporation of NYSE Group would be further amended and restated to eliminate references to the Delaware trust in Article IV, Section 4(a) and (b). See Exhibit 5F.

The Exchange. The Sixth Amended and Restated Operating Agreement of the Exchange would be further amended and restated to eliminate references to the Delaware trust in Section 3.03. See Exhibit 5G.

NYSE MKT. The Fifth Amended and Restated Operating Agreement of NYSE MKT would be further amended and restated to eliminate references to the Delaware trust in Section 3.03. See Exhibit 5H.

NYSE Market. The Second Amended and Restated Certificate of Incorporation of NYSE Market would be further amended and restated to eliminate references to the Delaware trust in Article IV, Section 2. See Exhibit 5I.

NYSE Regulation. The Restated Certificate of Incorporation of NYSE Regulation would be further amended and restated to eliminate references to the Delaware trust in Article V. See Exhibit 5J.

2. Statutory Basis

NYSE MKT believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act¹⁵ in general, and with Section 6(b)(1)¹⁶ in particular, in that it enables NYSE MKT 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 NYSE MKT. The Delaware trust was implemented in response to potential concerns arising under non-U.S. law and regulation at a time when NYSE MKT was owned by a company with substantial holdings of non-U.S. securities exchanges, substantial non-U.S. board representation, and explicit obligations on the part of its board to give due consideration to matters of non-U.S. law and the interests of non-U.S. stakeholders. In light of the elimination of these concerns as discussed above, NYSE MKT believes that termination of the Delaware trust is consistent with Section 6(b)(1).

NYSE MKT also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act¹⁷ because the proposed rule change would be consistent with and facilitate a

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(1).

¹⁷ 15 U.S.C. 78f(b)(5).

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. As discussed above, the Exchange believes that termination of the Delaware trust will remove impediments to the operation of NYSE MKT by eliminating certain expenses and administrative burdens as well as the potential for uncertainty among analysts and investors as to the practical implications of the Delaware trust on NYSE MKT as a marketplace and as a significant asset of ICE. For the same reasons, the proposed rule change is also designed to protect investors as well as the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE MKT 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. Indeed, the proposed rule change would eliminate an earlier arrangement intended in part to address potential competitive issues in the European securities markets that have abated as a result of ICE's sale of the Euronext securities exchanges in June 2014. The proposed rule change results in no concentration or other changes of ownership of exchanges.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days after publication (i) as the Commission may designate if it finds

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-NYSEMKT-2014-83 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2014-83. 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-NYSEMKT-2014-83 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).