

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73964; File No. SR-NYSEMKT-2014-107)

December 30, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Bylaws of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc., to Designate its Chief Strategic Officer, Chief Technology Officer and General Counsel as "Senior Officers" of ICE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 22, 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 to amend the Bylaws (the "ICE Bylaws") of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. ("ICE"), to designate its Chief Strategic Officer, Chief Technology Officer and General Counsel as "Senior Officers" of ICE. The text of the proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

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

<sup>2</sup> 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks approval for its ultimate parent entity ICE<sup>3</sup> to amend the ICE Bylaws to designate its Chief Strategic Officer, Chief Technology Officer and General Counsel (each, a “Designated Officer” and together, the “Designated Officers”) as “Senior Officers” of ICE. Each Designated Officer was a Senior Officer under the ICE Bylaws prior to the acquisition by ICE of NYSE Euronext in 2013 because each also was a Senior Vice President. Under the ICE Bylaws, all Senior Vice Presidents are Senior Officers. As Senior Officers, the Designated Officers were entitled under Article X, Section 10.6 of the ICE Bylaws to indemnification by ICE against certain actions, suits and proceedings.

Upon consummation of the acquisition of NYSE Euronext, the three titles were streamlined and the term “Senior Vice President” was eliminated. Specifically, the officer whose former title was “Senior Vice President, Chief Strategic Officer” is now “Chief Strategic Officer”; the officer whose former title was “Senior Vice President, Chief Technology Officer” is now “Chief Technology Officer”; and the officer whose title was formerly “Senior Vice President, General Counsel” is now “General Counsel”. The proposed amendment to the ICE

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<sup>3</sup> ICE owns 100% of the equity interest in ICE Holdings, Inc. (“ICE Holdings”), which in turn owns 100% of the equity interest in NYSE Holdings, LLC (“NYSE Holdings”). NYSE Holdings owns 100% of the equity interest of NYSE Group, Inc., which in turn directly or indirectly owns 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations – the Exchange, the New York Stock Exchange, LLC (“NYSE”) and NYSE MKT LLC (“NYSE MKT”) [sic].

Bylaws would assure that the Designated Officers continue to be identified as “Senior Officers” of ICE and therefore eligible for indemnification under Article X, Section 10.6 of the ICE Bylaws. The proposed rule change would not extend the indemnification provisions of the ICE Bylaws to any officers that were not historically indemnified nor would it alter the scope of the indemnity provided.<sup>4</sup>

Under the proposed amendment, Section 5.1 of the ICE Bylaws would be amended to identify by title additional officers that the board of directors may choose, specifically a Chief Strategic Officer, a Chief Technology Officer and a General Counsel (the “Designated Officers”). Section 5.1 would also be amended to expand the definition of the term “Senior Officer” to include the Designated Officers and any other officer designated a “Senior Officer” by the Board or the Compensation Committee of the Board from time to time in its sole discretion. The amendments also would provide that any employee deemed an officer of the Corporation under Section 16 of the Exchange Act<sup>5</sup> will be deemed a Senior Officer for purposes of the Bylaws.

## 2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) of the Exchange Act,<sup>6</sup> in general, and Section 6(b)(5) of the Exchange Act,<sup>7</sup> in particular, because the proposed rule change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to

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<sup>4</sup> The Exchange’s affiliates the NYSE and NYSE Arca have also submitted the same proposed rule filing in connection with the ICE Bylaw amendment.

<sup>5</sup> 15 U.S.C. 78p.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 clarification of the right to indemnification will enhance the ability of the Designated Officers to carry out their responsibilities as officers of ICE, including their responsibilities under the Exchange Act.

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 in the U.S. or European securities markets or have any impact on competition in those markets; rather, the clarification of the right to indemnification will enhance the ability of the Designated Officers to carry out their responsibilities as such, including their responsibilities under the Exchange Act.

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 Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> 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,

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>11</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to 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 the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the clarification of the right to indemnification may enhance the ability of the relevant officers of ICE to carry out their responsibilities as such, including their responsibilities under the Exchange Act, without delay. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>13</sup>

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

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<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the 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 Commission has waived the five-day pre-filing requirement in this case.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2014-107 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-NYSEMKT-2014-107. 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-2014-107, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Brent J. Fields  
Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).