

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74825; File No. SR-NYSEMKT-2015-27)

April 28, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change to Amend the Sixth Amended and Restated Operating Agreement of the Exchange

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 April 17, 2015, 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, II, and III 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 Sixth Amended and Restated Operating Agreement of the Exchange (“Operating Agreement”) to (1) establish a Regulatory Oversight Committee (“ROC”) as a committee of the board of directors of the Exchange (the “Board”), and (2) remove the requirement that the independent directors that make up the majority of the Board also be directors of Intercontinental Exchange, Inc., the Exchange’s parent company. 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 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Operating Agreement to (a) establish a ROC as a committee of the Board, and (b) remove the requirement that the independent directors that make up the majority of the Board also be directors of Intercontinental Exchange, Inc. (“ICE”), the Exchange’s parent company.

Creation of a ROC

The proposed ROC would have the responsibility to independently monitor the Exchange’s regulatory operations.⁴ To effectuate this change, the Exchange proposes to amend Section 2.03(h) of the Operating Agreement to add a subsection (ii) providing for a ROC and delineating its composition and functions. The proposed new Section 2.03(h)(ii) of the Operating Agreement would be substantially similar to Article III, Section 5(c) of the By-Laws of the NASDAQ Stock Market LLC (“Committees Composed Solely of Directors”).⁵

⁴ NYSE Regulation, Inc. (“NYSE Regulation”), a not-for-profit subsidiary of the Exchange’s affiliate New York Stock Exchange LLC (“NYSE”), performs all of the Exchange’s regulatory functions pursuant to an intercompany Regulatory Services Agreement (“RSA”) that gives the Exchange the contractual right to review NYSE Regulation’s performance. NYSE Regulation performs regulatory functions for the Exchange’s affiliate NYSE Arca, Inc. (“NYSE Arca”) pursuant to a similar intercompany RSA. NYSE Arca has submitted a similar proposal to establish a ROC with primary responsibility for overseeing regulatory operations. See SR-NYSEArca-2015-29.

⁵ See Securities Exchange Act Release No. 34-53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (“Release No. 34-53128”) (order granting

In particular, Section 2.03(h)(ii) would provide that the Board shall appoint a ROC on an annual basis. Proposed Section 2.03(h)(ii) would describe the composition of the ROC.

Proposed Section 2.03(h)(ii) would also describe the functions and authority of the ROC. The proposed ROC's responsibilities would be to:

- oversee the Exchange's regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities;
- assess the Exchange's regulatory performance; and
- advise and make recommendations to the Board or other committees of the Board about the Exchange's regulatory compliance, effectiveness and plans.⁶

application of NASDAQ Stock Market LLC ("NASDAQ") for registration as a national securities exchange). As noted below, members of the NASDAQ ROC must satisfy NASDAQ's public director requirements in addition to its independent director requirements. NASDAQ defines a public director as "a Director who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA." NASDAQ Bylaws, Article I(y). The Exchange does not have separate public director requirements and does not distinguish between public and independent directors but notes that, like the NASDAQ public director requirement, in order to meet the Exchange's independence requirements, a director must "not have any material relationships" with ICE and its subsidiaries. In addition, among other limitations, in order to be found independent, a director may not be a member, allied member, or employed by a member organization of the Exchange. See Independence Policy of Board of Directors of NYSE MKT LLC, available at http://wallstreet.cch.com/MKT/pdf/independence_policy.pdf. See also Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR-NYSE-2012-17; SR-NYSEArca-2012-59; SR-NYSEMKT-2012-07) (approving NYSE MKT's director independence policy).

⁶ These three core responsibilities of the proposed ROC would be substantially similar to those of other SROs' ROCs. See, e.g., NASDAQ Bylaws, Article III, Section 5 ("NASDAQ Bylaws"); Securities Exchange Act Release No. 34-58375 (August 18, 2008), 73 FR 49498, 49502 (August 21, 2008) (File No. 10-182) ("Release No. 34-58375") (approving application of BATS Exchange, Inc. ("BATS") seeking registration as a national securities exchange); Securities Exchange Act Release No. 34-61698 (March 10, 2010), 75 FR 13151, 13161 (March 12, 2010) ("Release No. 34-61698") (approving application of EDGX Exchange, Inc. and EDGA Exchange, Inc., seeking registration as a national securities exchange); and Amended and Restated By-Laws of

In furtherance of these functions, the proposed new subsection of the Operating Agreement would provide the ROC with the authority and obligation to review the regulatory budget of the Exchange and specifically inquire into the adequacy of resources available in the budget for regulatory activities. Under the proposed amendment, the ROC would be charged with meeting regularly with the Chief Regulatory Officer (“CRO”) in executive session and, in consultation with the Exchange’s Chief Executive Officer, establishing the goals, assessing the performance, and recommending the CRO’s compensation. Finally, under the proposed rule, the ROC would be responsible for keeping the Board informed with respect to the foregoing matters.⁷

The Exchange proposes that the ROC would consist of at least three members, each of whom would be a director of either the Exchange or of NYSE Regulation and who satisfies the independence requirements of the Exchange.⁸ The Exchange believes that a ROC comprised of at least three independent members is appropriate. The size and composition of the proposed ROC would be largely the same as that of the ROCs of other self-regulatory organizations (“SROs”), with the exception of the possibility to include independent directors of NYSE Regulation on the ROC.⁹ A ROC with at least three independent directors has been recognized

Miami International Securities Exchange, LLC, Article IV, Section 4.5(c).

⁷ The obligations of the proposed ROC would be substantially similar to those of other SROs’ ROCs. See, e.g., NASDAQ Bylaws, Article III, Section 5; Bylaws of NASDAQ OMX PHLX LLC, Article V, Section 5-2; Third Amended and Restated Bylaws of BATS Exchange, Inc., Article V, Section 6(c).

⁸ The Exchange’s independence requirements are set forth in the Independence Policy of the Board of Directors of the Exchange. See supra, note 5.

⁹ See e.g., NASDAQ By-laws, Article III, Section 5(c) (specifying a ROC comprising three directors who must satisfy both NASDAQ’s public director and independent director requirements); Third Amended and Restated Bylaws of BATS Exchange, Inc., Article V, Section 6(c) (“BATS Bylaws”) (specifying a ROC comprising three non-

as one of several measures that can help ensure the independence of the regulatory function from the market operations and commercial interests of a national securities exchange.¹⁰

Further, proposed Section 2.03(h)(ii) would provide that the Board may, on affirmative vote of a majority of directors, at any time remove a member of the ROC for cause. Proposed Section 2.03(h)(ii) would also provide that a failure of the member to qualify as independent under the independence policy would constitute a basis to remove a member of the ROC for cause. Similar authority is found in the bylaws governing the ROCs of other SROs.¹¹ In addition, proposed Section 2.03(h)(ii) would provide that, if the term of office of a ROC committee member terminates under this section, and the remaining term of office of such committee member at the time of termination is not more than three months, during the period of vacancy the ROC would not be deemed to be in violation of its compositional requirements by virtue of the vacancy. Once again, this is consistent with the rules and bylaws of other SROs.¹² Finally, the Exchange proposes to add text to Section 2.03(h) providing that vacancies in the membership of any board committee would be filled by the Exchange Board.¹³

industry (i.e., public) directors); and Chicago Board Options Exchange, Incorporated (“CBOE”) Bylaws, Article IV, Section 4.5 (specifying a ROC of at least three directors all of whom shall be “non-industry” directors).

¹⁰ See, e.g., Release No. 34-53128, 71 FR at 3555 (NASDAQ); Release No. 34-58375, 73 FR at 49502 (BATS); Securities Exchange Act Release No. 34-61152 (December 10, 2009), 74 FR 66699, 66704-705 (December 16, 2009) (File No. 10-191) (approving application of C2 Options Exchange, Incorporated, seeking registration as a national securities exchange); and Release No. 34-61698, 75 FR at 13161.

¹¹ See e.g., BATS Bylaws, Article V, Section 2(a) (“the Chairman may, at any time, with or without cause, remove any member of a committee so appointed, with the approval of the Board.”); Second Amended and Restated By-laws of National Stock Exchange, Inc., Article V, Section 5.2 (same).

¹² See e.g., NASDAQ Bylaws, Article III, Section 2(b).

¹³ NASDAQ has the same provision. See Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC, Section 9(g).

The Exchange proposes that members of the ROC could be independent directors of either the Exchange Board or the NYSE Regulation board. The proposed eligibility of independent directors of the NYSE Regulation board for the ROC would allow individuals to be members of the ROC who have direct experience in overseeing the adequacy and effectiveness of the Exchange's and its affiliates' regulatory programs.

The Exchange believes that the proposed rule change creating an independent board committee to oversee the adequacy and effectiveness of the performance of its self-regulatory responsibilities is consistent with previously approved rule changes for other self-regulatory organizations and would enable the Exchange to harmonize its corporate governance with that of its industry peers.¹⁴ Moreover, the Exchange believes that the proposed adoption of a ROC would ensure the continued independence of the regulatory process.¹⁵ The fundamental hallmarks of regulatory independence – determinations regarding the Exchange's regulatory plan, programs, budget and staffing made by individuals independent of Exchange management and a CRO having general supervision of the regulatory operations of the Exchange and reporting to a ROC – are integral to the proposal.¹⁶

¹⁴ See NASDAQ Bylaws, Article III, Section 5(c); BATS Bylaws, Article V, Section 6(c).

¹⁵ See, e.g., Securities Exchange Act Release No. 34-48946 (December 17, 2003), 68 FR 74678, 74687 (August 21, 2008) (SR-NYSE-2003-34).

¹⁶ See, e.g., Release No. 34-53128, 71 FR at 3555. In connection with its acquisition by the NYSE in 2008, the Exchange's ROC was eliminated and the Exchange contracted with NYSE Regulation to perform all of its regulatory functions. See note 4, *supra*. The approval order noted that "the governance of NYSE Regulation will provide a comparable level of independence that a ROC would provide." See Securities Exchange Act Release No. 34-58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62, SR-NYSE-2008-60) ("Amex Approval Order").

Exchange Independent Directors

Section 2.03(a)(i) of the Operating Agreement, which governs Board composition, provides that a majority of the Exchange's directors shall be U.S. Persons¹⁷ who are members of the board of directors of ICE that satisfy the Exchange's independence requirements.¹⁸ Such directors are defined as "ICE Independent Directors" in the Operating Agreement. The Exchange proposes to amend Section 2.03(a)(i) of the Operating Agreement to remove the requirement that the independent directors that make up the majority of the Board also be directors of ICE, to redefine "ICE Independent Directors" to remove the reference to ICE, and to make conforming changes in both Section 2.03(a)(i) and Section 2.03(a)(ii). The majority of directors of the Exchange Board would continue to satisfy the company independence policy.

The Exchange believes that eliminating the requirement that the independent directors of the Exchange also be directors of ICE would allow the Exchange to broaden the pool of potential Board members, resulting in a more diversified Board membership, while still ensuring the directors' independence. Eliminating the requirement that the independent directors of the Exchange also be directors of ICE would also make the Exchange's Board requirements more consistent with those of its affiliate NYSE Arca, which do not require any of its directors to be directors of ICE.¹⁹

¹⁷ Pursuant to Section 2.03(a)(1) [sic] of the Operating Agreement, a director is a "U.S. Person" if, as of the date of his or her most recent election or appointment to the Board, his or her domicile is, and for the immediately preceding 24 months has been, the United States. The Exchange does not propose to amend this requirement.

¹⁸ See note 5, *supra*.

¹⁹ See Amended and Restated NYSE Arca Bylaws, Article III, Section 3.02. The Exchange notes that its affiliate NYSE has also submitted a proposal to amend its Operating Agreement to remove the requirement that the independent directors that make up the majority of the Exchange Board also be directors of ICE, and to redefine "ICE Independent Directors" to remove the reference to ICE. See SR-NYSE-2015-16.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act²⁰ in general, and with Section 6(b)(1)²¹ 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 proposed change would create an independent board committee to oversee the adequacy and effectiveness of the performance of the Exchange's self-regulatory responsibilities. The proposed ROC, similar in composition and functions to the approved ROCs of other SROs, would be designed to oversee the Exchange's regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; assess the Exchange's regulatory performance; and advise and make recommendations to the Board or other committees of the Board about the Exchange's regulatory compliance effectiveness and plans.

As noted, the Exchange proposes that members of the ROC could be independent directors of either the Exchange Board or the NYSE Regulation board. The Exchange believes that proposing to allow independent directors of the NYSE Regulation board to be eligible for the ROC would provide the choice to include these individuals whose have direct experience in overseeing the adequacy and effectiveness of the Exchange's and its affiliates' regulatory programs. Accordingly, the Exchange believes that the proposed rule change would contribute

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(1).

to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act. The Exchange therefore believes that approval of the amendment to the Bylaws [sic] is consistent with Section 6(b)(1) of the Exchange Act.

Further, the Exchange believes its proposed change to remove the requirement that the independent directors that make up the majority of the Exchange Board also be ICE directors and redefine “ICE Independent Directors” to remove the reference to ICE is consistent with the Exchange Act. As noted above, this change would allow the Exchange to consider including individuals on its Board that are not already members of the ICE board. The Exchange believes that a more diversified pool of Board members would allow it to include individuals on its Board that could focus on the unique responsibilities of an SRO. This change would also make the Exchange’s Board requirements more consistent with those of its affiliate NYSE Arca, which does not require its directors to be ICE directors. For these reasons, the Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange 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. The Exchange therefore believes that approval of the proposed is consistent with Section 6(b)(1) of the Exchange Act.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act²² because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts

²² 15 U.S.C. 78f(b)(5).

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 the proposed creation of a ROC composed of independent directors would align the Exchange's corporate governance practices with other SROs that have adopted a ROC to monitor the adequacy and effectiveness of the regulatory program, assess regulatory performance, and assist the Board in reviewing the regulatory plan and the overall effectiveness of the regulatory function. Moreover, the Exchange believes that the proposed ROC structure would also sufficiently "insulate" the regulatory functions from the Exchange's "market and other commercial interests" in order for the Exchange to carry out its regulatory obligations.²³ The Exchange believes that eliminating the requirement that the independent directors of the Exchange also be directors of ICE would allow the Exchange to include individuals on its Board that have expertise it believes is necessary for its unique role as an SRO, because not all of the independent directors would have to be directors of ICE. The Exchange believes that the proposed rule change is therefore consistent with and facilitates a governance and regulatory structure that furthers the objectives of Section 6(b)(5) of the Exchange Act. The independent oversight of the Exchange's regulatory functions by the proposed ROC is also designed to protect investors as well as the public interest.

²³ Release No. 34-53128, 71 FR at 3556.

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

The Exchange does not believe that the proposed rule change would 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 intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange's Board.

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 up to 90 days (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-2015-27 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-2015-27. 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. 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-2015-27 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.²⁴

Brent J. Fields
Secretary

²⁴ 17 CFR 200.30-3(a)(12).