

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80536)

Order Granting Application by New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc., and NYSE National, Inc., Respectively, for a Conditional Exemption Pursuant to Section 36(a) of the Exchange Act from Certain Requirements of Rule 6a-2 under the Exchange Act

April 27, 2017

I. Introduction

On February 1, 2017, The New York Stock Exchange LLC (“NYSE”), NYSE MKT LLC (“NYSE MKT”), NYSE Arca, Inc. (“NYSE Arca”), and NYSE National, Inc. (“NYSE National”) (each an “Exchange”, collectively, “Exchanges”) each has requested, pursuant to Rule 0-12¹ under the Securities Exchange Act of 1934 (“Exchange Act”),² that the Securities and Exchange Commission (“Commission”) grant an exemption pursuant to Section 36(a)(1)³ of the Exchange Act from certain requirements under Rule 6a-2(b)(1) under the Exchange Act.⁴ Each Exchange is registered with the Commission as a national securities exchange under Section 6 of the Exchange Act. This order grants each Exchange’s request for exemptive relief, subject to the satisfaction of certain conditions, which are outlined below.

¹ 17 CFR 240.0-12.

² 15 U.S.C. 78a et seq.

³ 15 U.S.C. 78mm(a)(1).

⁴ 17 CFR 240.6a-2(b)(1). See letters dated February 1, 2017, from Elizabeth King, General Counsel and Corporate Secretary, NYSE, to Brent J. Fields, Secretary, Commission, regarding Application for Exemption from Certain Form 1 Requirements under Section 6 of the Securities Exchange Act of 1934, submitted on behalf of NYSE, NYSE MKT, NYSE Arca, and NYSE National, respectively (collectively, the “Exemption Requests”).

II. Application for Conditional Exemption from Certain Requirements of Exchange Act Rule 6a-2

Rule 6a-2(b)(1) under the Exchange Act⁵ requires a national securities exchange to file, on or before June 30 of each year, an updated Exhibit D as an amendment to its Form 1.⁶ Exhibit D to Form 1 requires an exchange to provide, for each subsidiary or affiliate of the exchange, unconsolidated financial statements for the latest fiscal year of the exchange.⁷

The Instructions to Form 1 define an “affiliate” as “[a]ny person that, directly or indirectly, controls, is under common control with, or is controlled by, the national securities exchange . . . , including any employees.”⁸ The Instructions to Form 1 define “control” as

The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract or otherwise. Any person that . . . directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities . . . is presumed to control that entity.⁹

Each Exchange has requested that the Commission grant it an exemption pursuant to Section 36(a)(1) of the Exchange Act, subject to the conditions set forth below, with respect to its “Foreign Indirect Affiliates,” as defined below, from the requirement under Rule 6a-2(b)(1) under the Exchange Act to file the financial information required by Exhibit D.

⁵ 17 CFR 240.6a-2(b)(1).

⁶ 17 CFR 249.1 (Form 1, “Application for, and Amendments to Application for, Registration as a National Securities Exchange or Exemption from Registration Pursuant to Section 5 of the Exchange Act.”)

⁷ Exhibit D to Form 1 requires that such financial statements consist, at a minimum, of a balance sheet and an income statement with such footnotes and other disclosures necessary to avoid rendering the financial statements misleading. Exhibit D further provides that, if any affiliate or subsidiary is required by another Commission rule to submit annual financial statements, the exchange may provide a statement to that effect, with a citation to the other Commission rule, in lieu of the financial statements required by Exhibit D.

⁸ Form 1 Instructions Section B., Explanation of Terms.

⁹ Id.

Each Exemption Request states that the respective Exchange is a wholly-owned subsidiary of NYSE Group, Inc. (“NYSE Group”), a Delaware corporation. Each Exemption Request further states that NYSE Group is wholly owned by NYSE Holdings LLC (“NYSE Holdings”), a Delaware limited liability company, which is wholly owned by Intercontinental Exchange Holdings, Inc. (“ICE Holdings”), a Delaware corporation. In turn, ICE Holdings is wholly owned by Intercontinental Exchange, Inc. (“Parent Company”), a Delaware corporation. The Parent Company, through its wholly-owned subsidiaries, owns a large number of foreign entities, some of which also own interests in other foreign entities in excess of 25%.¹⁰ The foreign entity affiliates and subsidiaries of the Parent Company are referred to, collectively, as the “Foreign Indirect Affiliates.”

Each Exchange states that, because of the limited and indirect nature of its connection to the Foreign Indirect Affiliates, the Exchange believes that the respective financial information of the Foreign Indirect Affiliates required by Exhibit D of Form 1 would have little relevance to the Commission’s ongoing oversight of the Exchange as a national securities exchange.¹¹ Each Exchange also states that the Foreign Indirect Affiliates have no ability to influence the management, policies, or finances of the Exchange and have no obligation to provide funding to, or ability to materially affect the funding of, the Exchange.¹² Each Exchange further states that the Foreign Indirect Affiliates have no ownership interest in the Exchange or in any of the

¹⁰ See Exemption Requests, supra note 4, at 2.

¹¹ See Exemption Requests, supra note 4, at 2-3.

¹² See Exemption Requests, supra note 4, at 3.

controlling shareholders of the Exchange and that there are no commercial dealings between the Exchange and the Foreign Indirect Affiliates.¹³

Furthermore, each Exchange states its opinion that its obtaining detailed financial information with respect to the Foreign Indirect Affiliates is unnecessary for the protection of investors and the public interest, and would be unduly burdensome and inefficient because the Foreign Indirect Affiliates are located in foreign jurisdictions and the disclosure of such information could implicate foreign information sharing restrictions in such jurisdictions.¹⁴ Each Exchange notes that the Commission has granted similar exemptions to several other national securities exchanges.¹⁵ In connection with its Exemption Request, each Exchange has provided an organizational chart setting forth the Parent Company's corporate structure, including its

¹³ See Exemption Requests, supra note 4, at 3. Each Exchange states that “commercial dealings” means any direct or indirect arrangement, agreement, or understanding or any other relationship including, but not limited to, the providing of hardware, software, technology services or any other goods or services that support the operation of the Exchange or any facility of the Exchange. See Exemption Requests at 3, n. 6.

¹⁴ See Exemption Requests, supra note 4, at 3.

¹⁵ As examples, each Exchange cites to Securities Exchange Act Release Nos. 60650 (September 11, 2009), 74 FR 47828 (September 17, 2009) (granting application by EDGX Exchange, Inc. (n/k/a Bats EDGX Exchange, Inc.) and EDGA Exchange, Inc. (n/k/a Bats EDGA Exchange, Inc.) for a conditional exemption pursuant to Section 36(a) of the Exchange Act from certain requirements of Rules 6a-1 and 6a-2 under the Exchange Act); 66241 (January 26, 2012), 77 FR 4845 (January 31, 2012) (granting application by BOX Options Exchange LLC for a conditional exemption pursuant to Section 36(a) of the Exchange Act from certain requirements of Rules 6a-1 and 6a-2 under the Exchange Act); and 69011 (March 1, 2013), 78 FR 14844 (March 7, 2013) (granting application by Topaz Exchange, LLC (n/k/a ISE Gemini, LLC) for a conditional exemption pursuant to Section 36(a) of the Exchange Act from certain requirements of Rules 6a-1 and 6a-2 under the Exchange Act). See Exemption Requests at 3. The Commission also granted a similar exemption to ISE Mercury, LLC. See Securities Exchange Act Release No. 75867 (September 9, 2015), 80 FR 55395 (September 15, 2015) (granting application by ISE Mercury, LLC for a conditional exemption pursuant to Section 36(a) of the Exchange Act from certain requirements of Rules 6a-1 and 6a-2 under the Exchange Act).

subsidiaries, and noting the affiliation of the Foreign Indirect Affiliates and the Exchange.¹⁶ In addition, each Exchange represents that it will provide, on or before June 30th of each year, amendments to the information provided on the organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Exchange.¹⁷

III. Order Granting Conditional Section 36 Exemption

Section 6 of the Exchange Act¹⁸ sets forth a procedure for an exchange to register as a national securities exchange.¹⁹ Rule 6a-1(a) under the Exchange Act²⁰ requires an application for registration as a national securities exchange to be filed on Form 1 in accordance with the instructions in Form 1. Rule 6a-2 under the Exchange Act establishes ongoing requirements for a national securities exchange to file certain amendments to Form 1.

Section 36(a)(1) of the Exchange Act provides that “the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is

¹⁶ See Exhibit A to the Exemption Requests, supra note 4.

¹⁷ See Exemption Requests, supra note 4, at 2.

¹⁸ 15 U.S.C. 78f.

¹⁹ Specifically, Section 6(a) of the Exchange Act states that “[a]n exchange may be registered as a national securities exchange . . . by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.” Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

²⁰ 17 CFR 240.6a-1(a).

necessary or appropriate in the public interest, and is consistent with the protection of investors.”²¹

For the reasons discussed below, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to exempt the Exchanges from the requirement under Rule 6a-2(b)(1) under the Exchange Act to provide the information required in Exhibit D to Form 1 with respect to the Foreign Indirect Affiliates, subject to the following conditions:

- (1) Each Exchange must provide, as part of its annual Form 1 amendment due on or before June 30th of each year, a list of the names of the Foreign Indirect Affiliates for which the Exchange is relying on exemptive relief; and
- (2) Each Exchange must provide, as part of its annual Form 1 amendment due on or before June 30th of each year, an organizational chart setting forth the affiliation of all affiliates, including those Foreign Indirect Affiliates for which the Exchange is relying on exemptive relief.

The information included in a national securities exchange’s annual amendment to Exhibit D to Form 1 under Rule 6a-2(b)(1) under the Exchange Act is designed to help the Commission exercise its oversight responsibilities with respect to national securities exchanges. Specifically, Exhibit D is designed to provide the Commission with information concerning the financial status of the affiliates and subsidiaries of a national securities exchange.²² Such information is intended to help the Commission to assess the financial health of the affiliates and

²¹ 15 U.S.C. 78mm(a)(1).

²² See Securities Exchange Act Release No. 18843 (June 25, 1982), 47 FR 29259 (July 6, 1982) (proposing amendments to Form 1); see also Form 1, 17 CFR 249.1, and supra Section II.

subsidiaries of a national securities exchange and thus to determine whether a national securities exchange has the ability to carry out its obligations under the Exchange Act.

Since the most recent amendments to Form 1 in 1998,²³ many national securities exchanges that previously were member-owned organizations with few affiliated entities have demutualized. Some of these demutualized exchanges have been consolidated under holding companies with numerous affiliates that, in some cases, have only a limited and indirect connection to the national securities exchange, with no ability to influence the management or policies of the national securities exchange and no obligation to fund, or to materially affect the funding of, the national securities exchange. The Commission believes that, with respect to these Foreign Indirect Affiliates, the information required under Exhibit D would have limited relevance to the Commission's oversight of a registered national securities exchange.

Based on the Exchanges' representations, the limited and indirect nature of the relationship between the Exchanges and the Foreign Indirect Affiliates, and the information that the Exchanges will provide with respect to all other affiliates, including the foreign direct affiliates and domestic direct and indirect affiliates, the Commission believes that it will have sufficient information necessary to oversee the Exchanges' activities as national securities exchanges under the Exchange Act.²⁴ In particular, the Commission notes that each Exchange has represented that the nature of the connection between it and the Foreign Indirect Affiliates is limited and indirect, that the Foreign Indirect Affiliates would have no ability to influence the management, policies, or finances of the Exchanges, and that the Foreign Indirect Affiliates

²³ See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (Regulation ATS Adopting Release).

²⁴ 15 U.S.C. 78f(b) and 78s(a).

would have no obligation to provide funding to, or ability to materially affect the funding of, the Exchanges.

In addition, the Commission notes that the Exchanges have represented that the Foreign Indirect Affiliates have no ownership interest in the Exchanges or in any of the controlling shareholders of the Exchanges and that there are no commercial dealings between any of the Exchanges and the Foreign Indirect Affiliates.²⁵

For the reasons discussed above, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the conditional exemptive relief requested by the Exchanges.

The Commission may modify by order the terms, scope or conditions of the exemption from Rule 6a-2(b)(1) under the Exchange Act granted to each Exchange if it determines that such modification is necessary or appropriate in the public interest, or is consistent with the protection of investors. Furthermore, the Commission may limit, suspend, or revoke the exemption granted to each Exchange if it finds that the Exchange has failed to comply with, or is unable to comply with, any of the conditions set forth in this order, if such action is necessary or appropriate in the public interest, or is consistent with the protection of investors.

IT IS ORDERED, pursuant to Section 36 of the Exchange Act,²⁶ that the Exchanges are exempt from the requirement under Rule 6a-2(b)(1) under the Exchange Act, with respect to the Foreign Indirect Affiliates, to update the information in Exhibit D to Form 1 on or before June 30th of each year subject to the following conditions:

²⁵ See Exemption Requests, supra note 4.

²⁶ 15 U.S.C. 78mm.

- (1) Each Exchange must provide, as part of its annual Form 1 amendment due on or before June 30th of each year, a list of the names of the Foreign Indirect Affiliates for which the Exchange is relying on exemptive relief; and
- (2) Each Exchange must provide, as part of its annual Form 1 amendment due on or before June 30th of each year, an organizational chart setting forth the affiliation of all affiliates, including those Foreign Indirect Affiliates for which the Exchange is relying on exemptive relief.

By the Commission.

Brent J. Fields
Secretary