

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79684; File No. SR-NSX-2016-16)

December 23, 2016

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change in Connection with the Proposed Acquisition of the Exchange by NYSE Group, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on December 22, 2016, National Stock Exchange, Inc. (“NSX[®]” or the “Exchange”) 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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”)³ and Rule 19b-4 thereunder,⁴ National Stock Exchange, Inc. (“NSX” or the “Exchange”) proposes, in connection with the proposed acquisition of the Exchange by NYSE Group, Inc. (“NYSE Group”), to: (1) amend the Amended and Restated Certificate of Incorporation of National Stock Exchange, Inc. (“Certificate of Incorporation”), and the Third Amended and Restated Bylaws of National Stock Exchange, Inc. (“Bylaws”) and make certain conforming amendments to the cover page, Table of Contents and first page of the Exchange’s

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

rulebook as well as Rules 2.10, 5.7, and the Schedule of Fees and Rebates; and (2) amend certain organizational documents of NYSE Group, NYSE Holdings LLC (“NYSE Holdings”), Intercontinental Exchange Holdings, Inc. (“ICE Holdings”), and Intercontinental Exchange, Inc. (“ICE”).

The text of the proposed rule change is available on the Exchange’s website at www.nsx.com, at the Exchange’s principal office, 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 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

On December 14, 2016, ICE entered into an agreement with the Exchange pursuant to which its wholly-owned subsidiary NYSE Group would acquire all of the outstanding capital stock of the Exchange (the “Acquisition”). As a result of the Acquisition, the Exchange would be renamed NYSE National, Inc. (“NYSE National”) and would be operated as a wholly-owned subsidiary of NYSE Group. NYSE Group is a wholly-owned subsidiary of NYSE Holdings, which is in turn 100% owned by ICE Holdings. ICE, a public company listed on the New York Stock Exchange LLC (the “NYSE”), owns 100% of ICE Holdings.

Following the Acquisition, the Exchange would continue to be registered as a national securities exchange and as a separate self-regulatory organization (“SRO”). As such, the Exchange would continue to have separate rules, membership rosters, and listings that would be distinct from the rules, membership rosters, and listings of the three other registered national securities exchanges and SROs owned by NYSE Group, namely, the NYSE, NYSE MKT LLC (“NYSE MKT”), and NYSE Arca, Inc. (“NYSE Arca”) (together, the “NYSE Exchanges”).

In connection with the Acquisition and as discussed more fully below, the Exchange proposes to amend its Certificate of Incorporation and Bylaws and make certain conforming amendments to the headings on the cover page, Table of Contents and first page of the Exchange’s rulebook as well as Rules 2.10, 5.7, and the Schedule of Fees and Rebates. Generally, the amendments would reflect the Exchange’s proposed new ownership and, in certain cases, align the Exchange’s governance provisions to those of other NYSE Exchanges that the Commission has already approved, as described in greater detail below.

The Exchange also proposes amendments to the following organizational documents of NYSE Group and its intermediary and ultimate parent entities:

- ICE bylaws and director independence policy,
- ICE Holdings bylaws and certificate of incorporation,
- NYSE Holdings operating agreement, and
- NYSE Group bylaws and certificate of incorporation.

These proposed changes would reflect the proposed new ownership of the Exchange by the NYSE Group, and, indirectly, ICE.⁵

⁵ The NYSE Exchanges describe these proposed revisions in the NYSE, NYSE MKT and NYSE Arca companion rule filings related to the Acquisition. See SR-NYSE-2016-90; SR-NYSEMKT-2016-122; SR-NYSEArca-2016-167.

The Exchange would effect the changes described herein following approval of this rule filing no later than February 28, 2017, on a date determined by its Board.

Amendments to Exchange Certificate of Incorporation and Bylaws

In connection with the Acquisition, the Exchange proposes to make various revisions to its Certificate of Incorporation and Bylaws. Following consummation of the transaction, the Exchange would become part of a corporate family that would include four separate exchanges. Accordingly, the Exchange believes that it is important for each of the four exchanges to have a consistent approach to corporate governance. Therefore, to simplify and create greater consistency with the organizational documents and governance practices of the NYSE Exchanges, the Exchange proposes to revise certain provisions of its Certificate of Incorporation and Bylaws.⁶

The Exchange believes that the proposed changes to the Certificate of Incorporation and Bylaws are consistent with the requirements of the Exchange Act. Finally, in proposing these revisions to the Certificate of Incorporation and Bylaws, the Exchange emphasizes that it also believes that the proposed rule change is not inconsistent with the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order, entered by the Commission on May 19, 2005 (the “2005 Order”).⁷

Set forth below are the specific proposed changes to the Certificate of Incorporation and Bylaws.

⁶ Because NYSE Arca, a non-stock corporation organized under Delaware law, is the most similar to the Exchange in corporate organization and in its use of “permit holders,” as opposed to “members,” the Exchange has primarily relied on NYSE Arca as a precedent. The New York Stock Exchange and NYSE MKT are limited liability companies.

⁷ See Securities Exchange Act Release No. 51714 (May 19, 2005).

Certificate of Incorporation

The Exchange proposes to make the following amendments to its Certificate of Incorporation.

- To reflect the Exchange’s name change, it proposes to replace “National Stock Exchange” with “NYSE National” before the word “Inc.” in the heading, the preamble, Article First and in the signature block.
- In the preamble, the Exchange proposes to add (a) “, and February 18, 2015” following “December 30, 2011” to reflect the last time the Certificate of Incorporation was restated, (b) a reference to Section 228 of the General Corporation Law of the State of Delaware.

The Exchange proposes to restructure and augment Article Third to conform the “Purpose” section to Article 3 of the certificate of incorporation of NYSE Arca.⁸ Accordingly, under the “Purpose” heading following the word “Third,” the phrase “purpose or” before “purposes” would be replaced with “nature of the business or” and the phrase “of the Corporation is” would be replaced with “to be conducted or promoted are:”. New sections (a) through (d), based on Article 3(a)-(d) of the certificate of incorporation of NYSE Arca, would also be added to the “Purpose” section to reflect the nature of the Exchange’s business to be conducted or promoted.

Proposed subsection (a) would describe the first purpose of the Corporation as being to conduct and carry on the functions of an “exchange,” as that term is defined in the Exchange Act, and state that, in connection with managing the business and affairs of the Exchange, the Exchange Board shall consider applicable requirements

⁸ See Certificate of Incorporation of NYSE Arca, Article 3.

for registration as a national securities exchange under Section 6(b) of the Exchange Act, including, without limitation, the requirements that (i) the rules of the Exchange shall be designed to protect investors and the public interest, and (ii) the Exchange shall be so organized and have the capacity to carry out the purposes of the Exchange Act and to enforce compliance by its members, as that term is defined in Section 3 of the Exchange Act (such statutory members being hereinafter referred to as the “ETP Holders”), and persons associated with its ETP Holders, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. In addition, proposed subsection (a) would state that the rules of the Exchange may set forth provisions for the regulation of the conduct of ETP Holders, the dues and assessments payable by ETP Holders, the grounds for and the method of expulsion from the status as an ETP Holder and other termination of trading permits held by ETP Holders, the limitations upon or qualifications of the voting power of ETP Holders and such other matters pertaining to the ETP Holders, including the transfer of trading permits, as the Board shall from time to time determine.

Proposed subsection (b) would describe the second purpose as to maintain high standards of commercial honor and integrity among the Exchange's ETP Holders.

Proposed subsection (c) would describe the third purpose as to promote and inculcate just and equitable principles of trade and business.

Finally, proposed subsection (d) would reflect the current text of the “Purpose” section except that the “t” in “to” would be capitalized. Proposed subsection (d) would describe the fourth purpose as to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

- The Exchange proposes to amend the “Authorized Stock” section of the Certificate of Incorporation to indicate that NYSE Group would be the shareholder. Accordingly, the Exchange would delete the phrase “At all times, a” in the second sentence and begin the sentence with “All.” The Exchange would add “issued and” before “outstanding” and “shares of” after “outstanding” and before “stock” and replace the phrase “owned by National Stock Exchange Holdings, Inc., a Delaware corporation.” with “held by NYSE Group, Inc., a corporation organized and existing under the Delaware General Corporation Law (“NYSE Group”).”
- The Exchange proposes to amend the “Board of Directors” section of the Certificate of Incorporation to replace “ETP Holder Director” with “Non-Affiliated Director” to reflect changes proposed in Section 3.2 of the Bylaws, which are described below.
- The Exchange proposes to amend the “Bylaws” section of the Certificate of Incorporation. In describing the effectiveness of changes to the Bylaws that require a rule filing, the Exchange proposes to replace the current formulation “approved by or filed with” with “filed with or filed with and approved by,” to reflect the fact that, while all changes to the Bylaws must be filed with the Commission, not all rule filings are approved by the Commission. Because “Exchange Act” would be defined in the new text in Article Third, the Exchange proposes to remove the definition in Article Seventh by deleting “Securities” before “Exchange [sic] and the phrase “Act of 1934, as amended (the ‘Act’).”

Bylaws

The Exchange proposes to make the following amendments to the Bylaws.

General

“Third” would be changed to “Fourth” and “National Stock Exchange” would be replaced with “NYSE National” on the cover page heading, the Table of Contents, and on the first page of the Bylaws.

Section 1.1 (Definitions)

The Exchange proposes to add and remove certain definitions. Most of the changes to the definitions relate to the proposed amendments to the composition of the Exchange Board in proposed Section 3.2, discussed below, to make the composition of the Board consistent with the make-up of the board of directors of NYSE Arca.⁹ As part of these changes, the definitions of “ETP Permit Holder Director,” “Independent Director,” “Industry Director” and “Non-Industry Director” would be deleted, and definitions of “Public Directors” and “Non-Affiliated Directors” would be added to Section 1.1.

Currently, subsections F-H and J-M are marked “reserved.” Because under the proposed revision subsection (I) would be reserved, the Exchange proposes to amend the list of reserved subsections to read “F.-M. Reserved.” In current Section 1.1(E)(4), which defines “Exchange,” “NYSE National” would replace “National Stock Exchange.”

Article III (Board of Directors)

The Exchange proposes to restructure and amend Article III of the Bylaws governing the powers, composition, nomination and election of its Board to more closely align the Bylaws with those of the other NYSE Exchanges. To effect these changes, the Exchange proposes to restructure Article III, Section 3.2 (General Composition) of the Bylaws, as follows.

The Bylaws currently provide that the Board is composed of between 7 and 25 directors, the exact number of which is determined by the Board. The Exchange proposes to amend

⁹ See Section 3.02(a) the NYSE Arca Bylaws.

Section 3.2 so that the number of directors would be determined from time to time by the stockholders, provided that the Board must meet the composition requirements in the Bylaws. This change would be consistent with the operating agreements of the NYSE and NYSE MKT, which both provide that the number of directors is determined by the member, provided that the boards of directors meet the composition requirements set out in the operating agreement.¹⁰

In addition, the Exchange proposes to make the composition of the Board consistent with the make-up of the board of directors of NYSE Arca and its subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”).¹¹ Accordingly, the Exchange proposes to replace Section 3.2(a), (b) and (c) with new subsections (a)-(d), which are substantially similar to Section 3.02(a)-(c) and (f) of the NYSE Arca Bylaws.

New paragraph (a) would require that the Board be made up as follows:

- (1) at least fifty percent (50%) of the directors would be persons from the public and would not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates (“Public Directors”); and
- (2) at least twenty percent (20%) of the directors would consist of individuals nominated by the ETP Holders of the Exchange (“Non-Affiliated Directors”).

¹⁰ See Section 2.03(a) of the Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC and Section 2.03(a) of the Tenth Amended and Restated Operating Agreement of NYSE MKT LLC. See also Securities Exchange Act Release Nos. 79115 (October 18, 2016), 81 FR 73187 (October 24, 2016) (SR-NYSE-2016-66) and 79114 (October 18, 2016), 81 FR 73177 (October 24, 2016) (SR-NYSEMKT-2016-93).

¹¹ See Section 3.02(a) the NYSE Arca Bylaws and Section 3.02(a) of the NYSE Arca Equities Bylaws.

The Exchange proposes that subsection (a) retain the provision from current subsection (b) that the term of office of a director shall not be affected by any decrease in the authorized number of directors.

Proposed new subsection (b) would provide that nominees for a director position shall provide such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications as a director, and that the Secretary shall make such determination concerning the nominee's qualifications.

Proposed subsection (c) would provide that at the first annual meeting and at each subsequent annual meeting of the stockholders, except as otherwise provided by the Bylaws, the stockholders would elect directors to serve until the next annual meeting or until their successors are elected and qualified.

Proposed new subsection (d) would specify that, except as otherwise provided in the Bylaws or its Rules, the stockholders shall nominate directors for election at the annual meeting of the stockholders and that such nominations shall comply with the Rules and the Bylaws.

Current subsection (d) would become new proposed subsection (e).¹²

Second, the Exchange proposes to replace current Article III, Section 3.4 with text from Section 3.02(e) of the NYSE Arca Bylaws. The proposed provision would be renumbered as Section 3.3, which is currently marked "Reserved." Proposed Section 3.3 would provide that each director shall hold office for a term that expires at the annual meeting of the stockholders next following his or her election, provided that if he or she is not re-elected and his or her successor is not elected and qualified at the meeting and there remains a vacancy on the Board,

¹² The Exchange notes that it did not incorporate text from Section 3.02(d) of the NYSE Arca Bylaws, as the appointment of the chair of the Board is addressed in current Section 3.5.

he or she shall continue to serve until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Proposed Section 3.3 would also provide that a director may serve for any number of terms, consecutive or otherwise. It would replace the current Section 3.4, which breaks out the term provision by category of director.

Third, current Article III, Section 3.5 (Nomination and Election) would become new Section 3.4, and would incorporate the NYSE Arca process for nominating Non-Affiliate Directors.¹³

The Exchange proposes to retain current subsection (a), but because it proposes to consolidate the ETP Holder Director Nominating Committee and Governance and Nominating Committee into one committee, the “Nominating Committee,” it would accordingly delete “Governance and” from proposed Article III, Section 3.4(a).

The Exchange proposes to delete the remaining subsections (b) through (f) of current Article III, Section 3.5. In their place, the Exchange proposes two new subsections (b) and (c), based on NYSE Arca Rule 3.2(b)(2)(C)(i) and (ii).

Proposed Article III, Section 3.4(b) would provide that the Nominating Committee shall publish the name(s) of one or more ETP Holders or Persons Associated with an ETP Holder (in any combination) as its nominee(s) for Non-Affiliated Directors of the Board of Directors of the Exchange. The Nominating Committee would name sufficient nominees so that at least twenty percent of the directors consist of Non-Affiliated Directors. The proposal would further provide that the names of the nominees shall be published on a date in each year sufficient to accommodate the process described. The date would be known as the “Announcement Date.”

¹³ See NYSE Arca Rule 3.2(b)(2)(C)(i) and (ii). The Exchange notes that because it only has one category of permit holder, it did not incorporate the NYSE Arca provisions for electing Non-Affiliated Directors from the two categories of NYSE Arca permit holders, ETP Holders and OTP Holders. See also NYSE Arca Equities Rule 3.2(b)(2)(C).

Further, proposed Section 3.4(b) would provide that, after the name of proposed nominee(s) is published, ETP Holders in good standing may submit a petition to the Exchange in writing to nominate additional eligible candidate(s) to fill Non-Affiliated Director position(s) during the next term. Further, if a written petition of at least 10 percent of ETP Holders in good standing were submitted to the Nominating Committee within two weeks after the Announcement Date, such person(s) would also be nominated by the Nominating Committee, provided, however, that no ETP Holder, either alone or together with other ETP Holders that are deemed its affiliates, may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for the Non-Affiliated Director position(s) on the Board.¹⁴ The proposed Section would further stipulate that each petition for a petition candidate must include a completed questionnaire used to gather information concerning director candidates, which form of questionnaire would be provided by the Exchange upon the request of any ETP Holder. Finally, proposed Section 3.4(b) would provide that, notwithstanding anything to the contrary, the Nominating Committee shall determine whether any petition candidate is eligible to serve on the Board (including whether such person is free of any statutory disqualification (as defined in section 3(a)(39) of the Exchange Act)), and such determination shall be final and conclusive.

Proposed Article III, Section 3.5(c) would set forth the petition election process, providing that, in the event that the number of nominees exceeds the number of available seats, the Nominating Committee shall submit the contested nomination to the ETP Holders for selection. The proposed Section contemplates that ETP Holders shall be afforded a confidential

¹⁴ The Exchange notes that NYSE Arca Rule 3.2(b)(2)(C)(ii) and (iii) imposes voting limits on OTP Holders from the same OTP Firm. Because NYSE Arca Equities, like the Exchange, does not have “ETP Firms,” the Exchange has followed the model of NYSE Arca Equities and referred to “ETP Holders who are deemed its affiliates,” instead. See NYSE Arca Rule 3.2(b)(2)(C); NYSE Arca Equities Rule 3.2(b)(2)(C).

voting procedure and shall be given no less than 20 calendar days to submit their votes. Under the proposed Section, each ETP Holder in good standing may select one nominee for the contested seat on the Board of Directors; provided, however that no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 20% of the votes cast for a particular nominee for the Non-Affiliated Director position(s) on the Board of Directors of the Exchange. With respect to the contested position, the proposed Section would provide that the nominee for the Board receiving the most votes of ETP Holders shall be submitted by the Nominating Committee to the Board and that the Nominating Committee shall also submit uncontested nominees to the Board. Under the proposed Section, tie votes shall be decided by the Board of Directors at its first meeting following the election.

Current Section 3.6 describes the election and role of the Board Chairman. The Exchange proposes to renumber Section 3.6 as new Section 3.5. The Exchange would delete the second sentence of the current Section 3.6 in its entirety, which currently provides that the Chairman may also serve as the CEO and/or President of the Exchange, but may hold no other offices in the Exchange and that unless the Chairman of the Board also serves as the Exchange CEO, the Board shall elect the Chairman from among the Non-Industry Directors. The proposed Section 3.5 would be consistent with the Bylaws of NYSE Arca, which provide that the board of directors appoints the Chairman by majority vote.¹⁵ None of the three NYSE Exchanges limits which category of director can serve as Chairman, and so the Exchange proposes to remove the limitation in its Bylaws.

¹⁵ See Article III, Section 3.02(d) of the NYSE Arca Bylaws.

Current Section 3.7 describes the process for filling Board vacancies. The Exchange proposes to renumber Section 3.7 as new Section 3.6, and to make changes to the text to be consistent with Section 3.03 of the NYSE Arca Bylaws.

Current Section 3.7(a)(i) provides that, notwithstanding any provision in the Bylaws to the contrary, any vacancy in the Board, however occurring, including a vacancy resulting from an increase in the number of the directors, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director, provided such new director qualifies for the category in which the vacancy exists. The Exchange proposes to provide that vacancies would be filled by the Chairman of the Board, subject to approval by a vote of a majority of directors, as is provided in Section 3.03 of the NYSE Arca Bylaws. To effect this change, the phrase “the Chairman of the Board, subject to approval by” would be added after “filled by” and “vote of” immediately following the proposed insertion and before “a majority” would be deleted. The Exchange also proposes to add a new second sentence that would provide that any vacancy will be filled with a person who satisfies the classification (e.g., public) associated with the vacant seat. Finally, the Exchange would add a sentence to the end of the proposed Section providing that, in the case of a vacancy in the office of the Chairman of the Board, the Board of Directors may designate an Acting Chairman among the directors then in office, in accordance with Section 3.03 of the NYSE Arca Bylaws.

Current Section 3.7(a)(ii) governs the filling of a vacancy resulting from an ETP Holder Director position becoming vacant prior to the expiration of such ETP Holder Director's term, or resulting from the creation of an additional ETP Holder Director position. The Exchange proposes conforming changes to replace “ETP Holder” Director with “Non-Affiliated” Director throughout proposed Section 3.6(a)(ii) and to delete “ETP Holder Director” in two instances

before “Nominating Committee.” The Exchange would also delete the parenthetical in current Section 3.7(b) referring to subsection (c), which as noted below would be deleted. References to Section 3.7 throughout the section would be updated with references to proposed Section 3.6.

The Exchange proposes to delete the remaining subsections of current Article III, Section 3.7. Subsection (c) allows the Board in its discretion to provide a director with a grace period for re-qualification, and subsection (d) would allow an ETP Holder Director not to lose his or her qualification as a director by reason of a suspension. The governing documents of the NYSE Exchanges do not have similar provisions, and so the Exchange proposes to remove them from the Bylaws.

Current Article III, Section 3.8 governs the removal of directors. The Exchange proposes to renumber it Section 3.7 and replace one reference to “ETP Holder Director” with “Non-Affiliated Director.”

Current Article III, Sections 3.9 through 3.15 would be renumbered Section 3.8 through 3.14, respectively. No further changes to these Sections are proposed.

Current Article III, Section 3.16, governing compensation of directors, would be amended to provide that the shareholders, rather than the Board, would have authority to fix compensation of all directors. The change would be consistent with the operating agreements of the New York Stock Exchange and NYSE MKT, which provide that the member sets director compensation.¹⁶ In connection with this change, the Exchange would also delete the clause “irrespective of any personal interest of any of its members,” from proposed new Section 3.15.

¹⁶ See Section 2.03(b) of the Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC and Section 2.03(b) of the Tenth Amended and Restated Operating Agreement of NYSE MKT LLC. The NYSE Arca bylaws are silent regarding director compensation.

Current Article III, Section 3.17, governing the Board’s power to interpret the Bylaws, would be deleted in its entirety. The governing documents of the NYSE Exchanges do not have similar provisions, and so the Exchange proposes to remove them from the Bylaws.

Article V (Committees)¹⁷

The Exchange proposes to reduce the number of Board committees following the Acquisition. The Exchange would retain the disciplinary committees (i.e., the Business Conduct Committee and Appeals Committee) and the Regulatory Oversight Committee (“ROC”). Rather than have two nominating committees, the Exchange proposes to have one Nominating Committee, whose role would be as set forth in proposed Section 3.4. The Exchange proposes to eliminate the Executive Compensation Committee, Executive Committee, and Audit Committee, none of which the NYSE Exchanges have. To effectuate these changes, the Exchange proposes to update the list of committees in the first sentence of Article V, Section 5.1 and delete current Sections 5.8, 5.9 and 5.10, relating to the Executive Compensation Committee, Audit Committee, and Governance & Nominating Committee, respectively.

Article V, Section 5.2 governs appointment, vacancies, and removal of Board committee members. Currently, these functions are undertaken by the Chairman of the Board with Board approval. The Exchange proposes that, consistent with the NYSE Exchanges,¹⁸ the Board shall appoint the members of all committees of the Board. Present Section 5.2 provides that the chairman may, at any time, with or without cause, remove any member of a committee, with the approval of the Board. The Exchange proposes to amend the statement to provide that the Board may, at any time, with or without cause, remove any member of a committee so appointed,

¹⁷ The Exchange is not proposing any changes to current Article IV (Stockholders).

¹⁸ See NYSE Arca Rules 3.2(a)(1) and 3.3, Section 2.03(h) of the Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC; and Section 2.03(h) of the Tenth Amended and Restated Operating Agreement of NYSE MKT LLC.

unless the Bylaws otherwise provide. To effect this change, the Exchange proposes to make the first sentence of Article V, Section 5.2 governing appointments and removal of committee members new subsection (a); delete the following text: “Chairman of the Board, with the approval of the”; a comma after “Board” and before “shall”; “Chairman” before “Board may” and the clause “with the approval of the Board”; and add “unless otherwise provided herein” after “so appointed.”

The Exchange proposes that the Exchange CEO, rather than the Chairman of the Board, would fill any committee vacancies, consistent with NYSE Arca Rule 3.2(a)(5). To effect this change, the remaining current text of Section 5.2 governing vacancies would form new subsection (b), and the Exchange would replace “Chairman of the Board” in the existing text with “Chief Executive Officer of the Exchange” after “filled by the.”

Proposed new Article V, Section 5.3 would set forth general provisions applicable to Board committees. The Exchange proposes that the last two sentences of current Section 5.2 would become new Section 5.3(a). The existing text would be amended to reflect that, in appointing new members to Board committees, the Board and not the Chairman of the Board would be responsible for determining that any such committee meets the composition requirements of Article V.

The Exchange also proposes to add subsections (b) through (e) of Section 5.3, which are substantially the same as NYSE Arca Rules 3.2(a)(2)-(4) and (10).

Proposed Section 5.3(b) would provide that the presence of a majority of the members of a committee shall be necessary to constitute a quorum for the transaction of business at a meeting of a committee.

Proposed Section 5.3(c) would provide that the act of a majority of the members present at any meeting at which there is a quorum shall be the act of such committee, except as may be otherwise specifically required by the Bylaws, Exchange Rules, or applicable law.

Proposed Section 5.3(d) would provide that, unless otherwise restricted by the Bylaws, the Rules, applicable law, or rules of the particular committee, members of a committee or of any subcommittee thereof may participate in meetings by means of conference call or similar communications equipped [sic] by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at the meeting.

Finally, proposed subsection (e) of Section 5.3 would provide that no member of a committee shall participate in the adjudication of any matter in which he or she is personally interested, although his or her presence at a meeting at which such matter is considered shall count toward the quorum requirements for the meeting.

The Exchange proposes to change current Section 5.3 (Powers and Duties of Committees) to Section 5.4. Current Section 5.4 (Conduct of Proceedings) would be renumbered Section 5.5.

The Exchange proposes to recast current Section 5.6 governing the ROC to make it more consistent with the ROCs established by the NYSE Exchanges, as follows.¹⁹ Currently, Section 5.6 of the Bylaws provides that the ROC shall be responsible to oversee all of the Exchange's regulatory functions and responsibilities and to advise regularly the Board about the Exchange's regulatory matters. The ROC shall at all times be comprised entirely of Non-Industry Directors.

¹⁹ See NYSE Arca Rule 3.3(a)(1); Section 2.03(h)(ii) of the Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC; and Section 2.03(h)(ii) of the Tenth Amended and Restated Operating Agreement of NYSE MKT LLC.

The Exchange proposes a new subsection (a) that would provide that the Board shall, on an annual basis, appoint the ROC. The existing text of current Section 5.6, with certain minor exceptions, would be deleted.

The Exchange proposes two new subsections (b) and (c) to proposed Section 5.6. First, proposed Section 5.6(b) would describe the ROC composition as consisting of at least three members, each of whom shall be a Public Director of the Exchange.²⁰ Further, proposed subsection (b) would provide that the Board, on affirmative vote of a majority of directors, may, at any time remove a member of the ROC for cause. Similar authority is found in the rules and bylaws governing the ROCs of the NYSE Exchanges and other SROs.²¹ In addition, proposed Section 5.6(b) would provide that a failure of the member to qualify as a Public Director shall constitute a basis to remove a member of the ROC for cause. Finally, proposed Section 5.6(b) 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 relevant committee shall not be deemed to be in violation of the compositional requirements by virtue the such vacancy. Once again, this is consistent with the rules and bylaws of the NYSE Exchanges and other SROs.²²

²⁰ See e.g., NYSE Arca Rule 3.3(a)(1)(B).

²¹ See e.g., NYSE Arca Rule 3.3(a)(1)(B) (“The Board, on affirmative vote of a majority of directors, may, at any time remove a member of the ROC for cause.”); Section 2.03(h)(ii) of the Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC (“The Board may, on affirmative vote of a majority of directors, at any time remove a member of the ROC for cause.”); Section 2.03(h)(ii) of the Tenth Amended and Restated Operating Agreement of NYSE MKT LLC (same); 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.”).

²² See e.g., NYSE Arca Rule 3.3(a)(1)(B); Section 2.03(h)(ii) of the Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC; Section 2.03(h)(ii) of the Tenth Amended and Restated Operating Agreement of NYSE MKT LLC; NASDAQ Bylaws, Article III, Section 2(b).

Second, proposed Section 5.6(c) would set forth the proposed ROC's responsibilities, which would be to:

- oversee the Exchange's regulatory and self-regulatory organization responsibilities;
- 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.

These three [sic] core responsibilities of the proposed ROC would be substantially similar to those of the ROCs of other SROs.²³

In furtherance of these functions, proposed new subsection (c) of Section 5.6 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 CEO, establish the goals, assess the performance, and recommend the

²³ See Securities Exchange Act Release Nos. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (SR-NYSE-2015-27) (order approving establishment of NYSE ROC) ("NYSE ROC Approval Order"); 75148 (June 11, 2015), 80 FR 34751 (June 17, 2015) (SR-NYSEMKT-2015-27) (order approving establishment of NYSE MKT ROC); 75155 (June 11, 2015), 80 FR 34744 (June 17, 2015) (SR-NYSEArca-2015-29) (order approving establishment of NYSE Arca ROC); Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498, 49502 (August 21, 2008) (File No. 10-182) (approving application of BATS Exchange, Inc. ("BATS") seeking registration as a national securities exchange); Securities Exchange Act Release No. 61698 (March 10 [sic], 2010), 75 FR 13151, 13161 (March 12 [sic], 2010) (approving application of EDGX Exchange, Inc. and EDGA Exchange, Inc., seeking registration as a national securities exchange); and Amended and Restated Bylaws of Miami International Securities Exchange, LLC, Article IV, Section 4.5(c).

CRO's compensation. Finally, under the proposed rule, the ROC would be responsible for keeping the Board informed with respect to the foregoing matters.²⁴

The Exchange believes that the proposed rule change governing the ROC's authority and responsibility to oversee the adequacy and effectiveness of the Exchange's performance of its self-regulatory responsibilities is consistent with previously approved rule changes for other SROs and would enable the Exchange to discharge its regulatory responsibilities under a corporate governance structure that is consistent with its affiliates and industry peers.²⁵ Moreover, the Exchange believes that the proposed changes would ensure the continued independence of the Exchange's regulatory process. In particular, integral to the proposal is that the oversight of the Exchange's self-regulatory responsibilities and regulatory performance, including review of the regulatory plan, programs, budget and staffing would be by a ROC composed of individuals independent of Exchange management and a CRO having general supervision of the regulatory operations of the Exchange that meets regularly with the ROC.²⁶

Section 5.7 describes the current ETP Holder Director Nominating Committee.

Consistent with the Exchange's proposal to have only one Nominating Committee to nominate Non-Affiliated Directors, as described above, "ETP Holder Director" would be deleted before

²⁴ The obligations of the proposed ROC would be substantially similar to those of other SROs' ROCs. See, e.g., NYSE Arca 3.3(a)(1)(C); Section 2.03(h)(ii) of the Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC; Section 2.03(h)(ii) of the Tenth Amended and Restated Operating Agreement of NYSE MKT LLC; 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).

²⁵ See NYSE, NYSE MKT and NYSE Arca approval orders in note 23, supra. See also NASDAQ Bylaws, Article III, Section 5(c); BATS Bylaws, Article V, Section 6(c).

²⁶ See, e.g., NYSE ROC Approval Order, 80 FR at 59838-39.

“Nominating Committee” and “Non-Affiliated” substituted for “ETP Holder” before “Directors” in proposed Section 5.7.

Current Section 5.11 governing the Appeals Committee would be retained and renumbered Section 5.8. The proposed amendments to Section 5.8 would reflect the proposed changes in the makeup of the Board. Specifically, it would provide that the Appeals Committee shall consist of at least one Public Director and at least one Non-Affiliated Director.²⁷ Further, the proposed Section would provide that if the Public Director recuses himself or herself from an appeal, such Public Director may be replaced by a Non-Affiliated Director for purposes of the applicable appeal if no other Public Director [sic] able to serve as the replacement. To effectuate these changes, the Exchange proposes to add “at least” before “one” in two places; replace “Independent” with “Public” before “Director” in three places; replace “ETP Holder” with “Non-Affiliated” and “Non-Industry” with “Non-Affiliated” before “Director”; and delete “one Industry Director” from the sentence describing the composition of the Appeals Committee. Finally, current Section 5.12, which describes the Business Conduct Committee, would also be retained, and renumbered Section 5.9. Consistent with the changes in proposed Section 5.2(a), the Exchange would delete “Chairman with the approval of the” before “Board” in the last sentence to specify that the Board shall appoint the Business Conduct Committee members.

Article VI (Officers)

Article VI, Section 6.1 describes the officers of the Exchange. The Exchange proposes that, rather than require that certain officers be appointed, the Board shall elect officers of the

²⁷ See NYSE Arca Rule 3.3(a)(2) (providing that the Committee for Review, the appeals committee of NYSE Arca, will be composed of the non-affiliated directors (the OTP Directors and ETP Directors) and public directors of NYSE Arca and NYSE Arca Equities). The Bylaws would retain the current requirement that all committees, including the Appeals Committee, be comprised of at least three people and may include persons that are not members of the Board. See Article V, Section 5.3.

Exchange as it deems appropriate, which may include a CEO, President, CRO, Secretary, Treasurer, and such other officers as the Board may determine. The proposed change would be consistent with Section 5.01 of the NYSE Arca Bylaws. To effect this change, the Exchange proposes to add “Board shall elect” before “officers” in the first sentence and add “as it deems appropriate, which may include” in place of “shall consist of.”

The Exchange would delete the text of current Section 6.2 governing compensation and the next heading such that current Section 6.3 regarding tenure and appointment would become proposed Section 6.2. Current Section 6.2 provides that the Board or a Board committee shall fix the compensation of all the officers of the Exchange. The Exchange does not propose to retain the current provision. Indeed, none of the NYSE Exchanges has provisions requiring that the Board determine the compensation of the relevant exchange’s officers.

Current Section 6.3 governing removal and vacancies would become new Section 6.4.

Current Section 6.5 governing powers and duties would become new Section 6.4.

Current Section 6.6 governing appointment of an arbitration director would be deleted, as there is no similar provision in the governing documents of the NYSE Exchanges.

Article VII (Indemnification)

The Exchange proposes to restructure its indemnification policies to align with those of its affiliates. Accordingly, the Exchange has amended Article VII to be substantially the same as Article VII of the NYSE Arca bylaws.²⁸

²⁸ References in Article VII of the NYSE Arca bylaws to “Holding Member” and “Permit Holder Committee member” are revised to “stockholders” and “ETP Holder committee member” in proposed Section 7.1. Because the Exchange does not have a separate category of committee called “Permit Holder Committee,” a reference to such committees has been deleted.

Current Section 7.1 would be renamed “Indemnification” and “Extent of” in the heading deleted.

Subsection (a) of Article VII, Section 7.1 would be amended to remove the reference to maximum not prohibited by the Delaware General Corporation Law and clarify that the Exchange will indemnify employees and agents, and not solely directors or officers in actions other than those by or in the right of the Exchange. These proposed changes would conform the formulations in current subsection (a) to those in Article VII of the NYSE Arca bylaws.

To effect these changes, the Exchange would delete “shall, to the maximum extent not prohibited by the General Corporation Law of Delaware or any other applicable laws as” and “from time to time be in effect” in the first sentence and the reference to “hold harmless” after “indemnify”. References to “director” would be replaced by “an employee” and references to “officer” would be replaced by “agent” throughout. The parenthetical clause “other than an action by or in the right of the Exchange” would also be added in the place of a comma after “investigative.” Additional text would be added to the penultimate sentence, to provide that a person indemnified under Section 7.1(a) would be indemnified if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Further, the paragraph would provide that the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that such person did not act in good faith and in a manner which they reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had reasonable cause to believe that their conduct was unlawful. The last sentence

of the first full paragraph of subsection (a) providing that the Exchange shall be required to indemnify an Indemnified Person in connection with an action, suit or proceeding initiated by such person only if such action, suit or proceeding was authorized by the Board, would be deleted.

The Exchange also proposes the following non-substantive changes to Section 7.1(a): replacing a reference to “corporation” with “Exchange”; deleting “all” before “expenses” and adding “and expenses” after “attorneys’ fees”; and replacing “such Indemnified Person” with “him or her.”

The Exchange also proposes to delete the entire second full paragraph of current Section 7.1(a).

The following Sections would be deleted in their entirety: Section 7.2. (Expenses), Section 7.3 (Contract), Section 7.4 (Discretionary Indemnification Coverage), Section 7.5 (Continuity of Indemnification and Non-Exclusivity), Section 7.6 (Insurance), and Section 7.7 (Exchange Not Liable).

The Exchange proposes to add new subsections (b) through (j) to Section 7.1, as follows, to align the Exchange’s indemnification policy with Article VII of the NYSE Arca bylaws.

Proposed subsection (b) would specify that the Exchange may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Exchange to procure a judgment in its favor by reason of the fact that he or she is or was an employee or agent of the Exchange, or is or was serving at the request of the Exchange as an employee or agent of another Exchange, partnership, joint venture, trust or other enterprise against expenses (including attorneys’ fees and expenses) actually or reasonably incurred by him or her in connection with the defense or settlement of such action or

suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange. The proposed subsection would also specify that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Exchange unless the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine, despite the adjudication of liability but in view of all the circumstances of the case, that such person is fairly and reasonably entitled to indemnity for such expenses the court deems proper.

Proposed subsection (c) would provide that, to the extent that an employee or agent of the Exchange has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in proposed subsections (a) and (b), or in defense of any claim, issue or matter therein, they shall be indemnified by the Exchange against expenses (including attorneys' fees and expenses) actually and reasonably incurred by them in connection therewith.

Proposed subsection (d) would specify that any indemnification under proposed subsections (a) and (b) (unless ordered by a court) shall be made by the Exchange only as authorized in the specific case upon a determination that indemnification of the employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in proposed subsections (a) and (b) and under applicable law. Proposed subsection (d) would further provide that such determination shall be made, with respect to a person who is a director or officer at the time of such determination (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or, if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

Proposed subsection (e) would provide that the Exchange shall indemnify, to the fullest extent permitted by applicable law as such may be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was an officer, a floor official or a member of the Board of Directors or any committee thereof, or is or was serving at the request of the Exchange as an officer or member of the board of directors or any committee thereof of another Exchange, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding. Proposed subsection (d) would further provide that the Exchange is not authorized to provide indemnification of any officer, floor official, director, or ETP Holder committee member for any acts or omissions or transactions from which a director may not be relieved of liability as set forth in Section 102(b)(7) of the General Corporation Law of the State of Delaware.

Proposed subsection (f) would provide that the indemnification provided by Section 7.1 as proposed shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of the stockholders or disinterested directors or otherwise.

Proposed subsection (h) would clarify that for purposes of proposed Section 7.1, references to "the Exchange" shall include, in addition to the resulting Exchange, any constituent Exchange (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its officers, floor officials, directors, ETP Holder committee members and employees or agents.

Proposed subsection (i) would clarify that for purposes of proposed Section 7.1, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Exchange” shall include any service as a director, officer, employee or agent of the Exchange which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Exchange” as referred to in proposed Section 7.1.

Finally, proposed subsection (j) would provide that if any provision or provisions of proposed Section 7.1 shall be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired and that, to the fullest extent possible, shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Article VIII (Amendments)

Article VIII, Section 8.1 describes the Board’s power to adopt, amend or repeal the Bylaws. The Exchange proposes to update the cross references to Sections 3.1 through 3.8, Section 3.12, and Section 4.5, to reflect the proposed changes to Article III discussed above. Accordingly, the cross references would be updated to read “Sections 3.1 through 3.7, Section 3.11, or Section 4.5 of these By-Laws.”

In addition, the Exchange proposes to delete the last three sentences of current Section 8.2, which governs amendment or repeal of Exchange Rules. Such sentences provide that all

proposals to adopt, alter or amend any rule shall be presented in writing to the Board by the Chairman of the Board, and that the Board shall act on the proposal. The Exchange proposes to align its processes to adopt, alter or amend any rule with those of the NYSE Exchanges, which provide that senior management may approve proposed rule changes pursuant to authority delegated to it by the relevant board of directors.

Article X (Self-Regulatory Function of the Exchange)²⁹

Article X, Section 8.1 describes certain considerations relevant to the Exchange's SRO function.

The Exchanges proposes to revise current Section 10.2 governing participation in Board and committee meetings. The Section would be amended to require that all Board and committee meetings relating to the structure of the market which the Exchange regulates (in addition to meetings pertaining to the Exchange's SRO function) shall also be closed to all persons other than members of the Board and officers, staff, counsel or other advisors. To effect this change, the Exchange would add "or relating to the structure of the market which the Exchange regulates" in two places. The Exchange would also replace a reference to "National Stock Exchange Holdings" with "NYSE Group." The changes will make Section 10.2 consistent with Section 3.13 of the NYSE Arca bylaws.

The current text of Section 10.4, which governs Exchange use of regulatory fees and penalties would also be deleted and replaced with a statement that any regulatory assets or any regulatory fees, fines or penalties collected by the Exchange's regulatory staff will be applied to fund the legal, regulatory and surveillance operations of the Exchange, and the Exchange shall not distribute such assets, fees fines or penalties to pay dividends or be distributed to any other

²⁹ The Exchange is not proposing any changes to current Article IX (Certificates of Stock and their Transfer) or Article XI (General Provisions).

entity. This language is substantially similar to the formulation recently approved for the NYSE and NYSE MKT.³⁰

Rule Amendments

The Exchange proposes to make the following conforming amendments to Rules 2.10 and 5.7 and to the Schedule of Fees and Rebates:

- The Exchange proposes to amend the cover page of the Rules, the Table of Contents and the first page of the Rules above the heading “CHAPTER I. Adoption, Interpretation and Application of Rules, and Definitions” to replace “National Stock Exchange” with “NYSE National,” before the word “Inc.” The cover page would also be amended to replace “November 8” following “Updated through” and the number 6 in “2016” with placeholders for the effective date of the new rules.
- Rule 2.10 (No Affiliation between Exchange and any ETP Holder) prohibits the Exchange or any affiliated entity from acquiring or maintaining an ownership interest in an ETP Holder but does not prohibit any ETP Holder from being or becoming an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange, solely by reason of such ETP Holder or any officer, director, manager, managing member, partner or affiliate of such ETP Holder being or becoming either (a) an ETP Holder

³⁰ See Section 4.05 of the Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC and Section 4.05 of the Tenth Amended and Restated Operating Agreement of NYSE MKT LLC. Reflecting the Exchange’s status as a stock corporation rather than a limited liability corporation, the proposed text replaces “to the Member or any other entity” with “pay dividends or be distributed to any other entity.” The proposed text also replaces “Company” with “Exchange” throughout. See also Securities Exchange Act Release Nos. 79115 (October 18, 2016), 81 FR 73187 (October 24, 2016) (SR-NYSE-2016-66); and 79114 (October 18, 2016), 81 FR 73177 (October 24, 2016) (SR-NYSEMKT-2016-93).

Director or an At-Large Director pursuant to the bylaws, or (b) a member of the Board of Directors of NSX Holdings, Inc.

To reflect the proposed amendment to Section 3.2 of the Bylaws as discussed above, the Exchange proposes to replace the phrase “ETP Holder Director or an At-Large Director” with “Non-Affiliated Director.”³¹ In the immediately following parenthetical, the Exchange proposes to delete “such terms are” to reflect that the term “Non-Affiliated Director” would be the only term defined in the Bylaws.

Finally, the Exchange proposes to replace three references to “NSX Holdings” with “ICE” before the word “Inc.”

- Rule 5.7 (Annual Certification of Compliance and Supervisory Processes) requires the chief executive officer of each ETP Holder to provide an annual certification regarding certain of its processes. The Exchange proposes to replace two references in the Rule to “National Stock Exchange” with “NYSE National” before the word “Inc.” The Exchange proposes to replace two references in the Rule to “National Stock Exchange” with “NYSE National” before the word “Inc.”
- The Exchange proposes to amend the heading and first sentence of the Schedule of Fees and Rebates to add “NYSE” before “National” and to delete “Stock Exchange” and the defined term “NSX.” The Exchange would also replace “NSX” before “Depth of Book feed” in the Market Data section of the price list with “NYSE National”.

Amendment of ICE, ICE Holdings and NYSE Group Governing Documents

³¹ The Exchange notes that the term “At-Large Director” is not used in the Bylaws, Certificate of Incorporation or rules of the Exchange.

The Exchange proposes that, in connection with the Acquisition, the Commission approve the organizational documents of ICE and its wholly-owned subsidiaries ICE Holdings and NYSE Group and the Independence Policy of the Board of Directors of Intercontinental Exchange, Inc. (“ICE Independence Policy”), all of which are to be amended concurrently with the Acquisition to reflect ownership of the Exchange.

The current organizational documents of ICE and its wholly-owned subsidiaries provide certain protections to the NYSE Exchanges that are designed to protect and facilitate their self-regulatory functions, including certain restrictions on the ability to vote and own shares of ICE.³² In general, the organizational documents of ICE and its wholly-owned subsidiaries are being amended to provide similar protections to the Exchange as are currently provided to the NYSE Exchanges under those documents.

In addition, obsolete references to NYSE Market (DE), Inc. (formerly NYSE Market, Inc.) (“NYSE Market (DE)”), and NYSE Regulation, Inc. (“NYSE Regulation”) found in various documents are proposed to be deleted.³³

Proposed Seventh Amended and Restated Bylaws of Intercontinental Exchange, Inc.
(“ICE Bylaws”)

³² See Securities Exchange Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (approving rule changes related to NYSE Euronext becoming a wholly owned subsidiary of ICE (then called IntercontinentalExchange Group, Inc.)).

³³ NYSE Market (DE) and NYSE Regulation were previously parties to a Delegation Agreement whereby the NYSE delegated certain regulatory functions to NYSE Regulation and certain market functions to NYSE Market (DE). The Delegation Agreement was terminated when the NYSE re-integrated its regulatory and market functions. As a result, the two entities ceased being regulated subsidiaries. See Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015). NYSE Regulation has since been merged out of existence.

The ICE Bylaws would be amended to reflect the Acquisition and incorporate the Exchange in the ICE Bylaws' existing voting and ownership restrictions, provisions relating to the qualifications of directors and officers and their submission to jurisdiction, compliance with the federal securities laws, access to books and records, and other matters related to its control of the U.S. Regulated Subsidiaries.

Specifically, the ICE Bylaws would be amended as follows:

- The definition of “U.S. Regulated Subsidiaries” in Article III, Section 3.15, which currently includes the New York Stock Exchange, NYSE Market (DE), NYSE Regulation, NYSE Arca, LLC, NYSE Arca, NYSE Arca Equities, and NYSE MKT, would be amended to include the Exchange. The obsolete references to NYSE Market (DE) and NYSE Regulation would also be deleted.
- Article VIII (Confidential Information), Section 8.1, would be amended to extend to the Exchange the same protection regarding confidential information provided to the NYSE Exchanges and NYSE Arca Equities, and to remove the obsolete references to NYSE Market (DE) and NYSE Regulation.
- Article XI, Section 11.3, provides that, for so long as ICE controls any of the U.S. Regulated Subsidiaries, any amendment to or repeal of the ICE Bylaws must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder, or (ii) submitted to the boards of directors of the U.S. Regulated Subsidiaries or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by ICE. Section 11.3 would be amended to include the

Exchange, and to delete the obsolete references to NYSE Market (DE) and NYSE Regulation.

The ICE Bylaws would be further amended to add a new Article XII (Voting and Ownership Limitations). New Section 12.1.a of Article XII would provide that, subject to its fiduciary obligations under applicable law, for so long as ICE directly or indirectly controls the Exchange (or its successor), the board of directors of ICE shall not adopt any resolution pursuant to clause (b) of Section A.2 of Article V of the certificate of incorporation of ICE (which relates to ICE board of directors approval of ownership of ICE capital stock by a person together with its related persons in excess of 20%), unless the board of directors of ICE shall have determined that:

- in the case of a resolution to approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter, neither such person nor any of its related persons is an ETP Holder of the Exchange;
- in the case of a resolution to approve the entering into of an agreement, plan or other arrangement under circumstances that would result in shares of stock of ICE that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any person, but for Article V of the Certificate of Incorporation of ICE, either alone or together with its related persons, to vote, possess the right to vote or cause the voting of shares of stock of ICE that would exceed 20% of the then outstanding votes entitled to be cast on such matter neither such person nor any of its related persons is, with respect to the Exchange, an ETP Holder.

New Section 12.1.b would provide that, subject to its fiduciary obligations under applicable law, for so long as ICE directly or indirectly controls the Exchange (or its successor), the Board of Directors of ICE shall not adopt any resolution pursuant to clause (b) of Section B(2) of Article V of ICE’s Certificate of Incorporation, unless the Board of Directors shall have determined that neither such person nor any of its related persons is an ETP Holder.

New Section 12.2 would provide that, for so long as ICE shall control, directly or indirectly, the Exchange (or its successor), the ICE board of directors shall not adopt any resolution to repeal or amend any provision of the certificate of incorporation of ICE unless such amendment or repeal shall either be (a) filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder or (b) submitted to the board of directors of the Exchange (or the board of directors of its successor), and if such board of directors determines that such amendment or repeal must be filed with or filed with and approved by the Commission 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 Commission, as the case may be.

Proposed Eighth Amended and Restated Certificate of Incorporation of Intercontinental Exchange Holdings, Inc. (“ICE Holdings Certificate of Incorporation”)

The ICE Holdings Certificate of Incorporation is being amended as follows:

- On the first page, add “Eighth” and delete “Seventh” before “Amended and Restated Certificate of Incorporation” in the heading and update items (2) – (5) accordingly to reflect that this would be the eighth amendment and restatement, including replacing

an incorrect reference to “Sixth” before “Amended” in item (3). The date would also be updated in the preamble on the first page.

- To distinguish between the ETP Holders of NYSE Arca Equities and those of the Exchange, subsection A.3.c.ii of Article V (Limitations on Voting and Ownership) would be amended to define an ETP Holder of NYSE Arca Equities as “NYSE Arca Equities ETP Holder.” Obsolete references to NYSE Market (DE) and NYSE Regulation, would also be deleted.³⁴

Subsection A.3.c of Article V would be amended to add a new subsection (v), similar to those in place for the other NYSE Exchanges, which would provide that, for so long as the ICE Holdings directly or indirectly controls NYSE National (or its successor), no person nor any of its related persons (as those terms are defined therein) is an ETP Holder (as proposed to be defined in the bylaws of NYSE National, discussed above) of NYSE National.

- Subsection A.3.d of Article V would be amended to add “NYSE Arca” before “ETP Holder” in one place to distinguish between the NYSE Arca Equities ETP Holders of and those of the Exchange.

Subsection A.3.d would be further amended to add a new subsection (v) similar to those in place for the other NYSE Exchanges. The new subsection would incorporate NYSE National into the existing restriction, such that the ICE Holdings Board of Directors would be restricted from adopting a resolution to approve the exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast

³⁴ See note 33, supra.

on such matter, where neither such person nor any of its related persons is, with respect to NYSE National, an NYSE National ETP Holder.

- Subsection B.3 of Article V would be amended to add a new subsection (g) similar to those in place for the other NYSE Exchanges, incorporating NYSE National into the restriction on the ICE Holdings board of directors adopting any resolution pursuant to clause (b) of Section B.2 of Article V of the ICE Holdings Certificate of Incorporation (which relates to ICE board of directors approval of ownership of ICE capital stock by a person together with its related persons in excess of 20%) unless the NYSE Holdings board of directors determines that, for so long as ICE Holdings controls NYSE National, neither such person nor any of its related persons is an NYSE National ETP Holder.

Proposed Fifth Amended and Restated Bylaws of Intercontinental Exchange Holdings, Inc. (“ICE Holdings Bylaws”)

The ICE Holdings Bylaws are being amended as follows:

- The cover page and heading on the first page would be amended to add “Fifth” and delete “Fourth” before “Amended and Restated Bylaws” to reflect that this would be the fifth amendment and restatement. The effective date on the cover page would also be updated.
- Similar to the ICE Bylaws discussed above, the ICE Holdings Bylaws would be amended to include “NYSE National, Inc.” in:
 - The definition of “U.S. Regulated Subsidiaries” in Article III, Section 3.15, which currently includes the NYSE, NYSE Market (DE), NYSE Regulation, NYSE Arca, LLC, NYSE Arca, NYSE Arca Equities, and NYSE MKT LLC,

and to provide that the term “U.S. Regulated Subsidiaries” includes those entities listed or their successors, but only so long as they continue to be controlled, directly or indirectly, by ICE Holdings. Obsolete references to NYSE Market (DE) and NYSE Regulation in that section would also be deleted;³⁵

- Article VIII (Confidential Information), Section 8.1, which would be amended to extend the same protection to confidential information relating to the self-regulatory function of the Exchange or its successor;³⁶ and
- Article XI (Amendment to the Bylaws), Section 11.3, which provides that, for so long as ICE controls any of the U.S. Regulated Subsidiaries, any amendment to or repeal of the ICE Bylaws must either be (i) filed with or filed with and approved by the Commission under section 19 of the Exchange Act and the rules promulgated thereunder, or (ii) submitted to the boards of directors of the U.S. Regulated Subsidiaries or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by ICE Holdings. Obsolete references to NYSE Market (DE) and NYSE Regulation would also be deleted from Article VXI, Section 11.3.³⁷

Proposed Independence Policy of the Board of Directors of

Intercontinental Exchange, Inc. (“ICE Director Independence Policy”)

³⁵ See note 33, supra.

³⁶ Article VIII, Section 8.1 would also be amended to delete obsolete references to NYSE Market (DE) and NYSE Regulation.

³⁷ See note 33, supra. Conforming changes to delete and replace connectors would also be made throughout.

The ICE Director Independence Policy would be amended to add NYSE National to the section describing “Independence Qualifications.” In particular, NYSE National would be added to categories (1)(b) and (c) that refer to “members,” as defined in section 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act.³⁸ The clause “and ‘Person Associated with an ETP Holder’ (as defined in Rule 1.5 of NYSE National, Inc.)” would also be added to category (1)(b) in reference to “allied persons.” NYSE National would also be added to subsections (4) and (5) of the “Independence Qualifications” section.³⁹ Obsolete references to NYSE Market (DE) and NYSE Regulation would also be deleted.⁴⁰

Proposed Eighth Amended and Restated Limited Liability Company Agreement of NYSE Holdings LLC (“NYSE Holdings LLC Operating Agreement”)

The NYSE Holdings LLC Operating Agreement would be amended as follows:

- The heading and preamble would be amended to add “Eighth” and delete “Seventh” before “Amended and Restated Limited Liability Agreement” to reflect that this would be the eighth amendment and restatement. The effective date would also be updated. After “This Agreement amends and restates in its entirety that” in the second full sentence would be added the clause “certain Seventh Amended and Restated Limited Liability Company Agreement, dated as of May 22, 2015, which amended and restated in its entirety that.”
- The current penultimate whereas clause would be amended by adding “in May 2015” before “the Company” and “now desires to amend and restate” immediately

³⁸ See 15 U.S.C. 78c(a)(3)(a).

³⁹ Conforming changes would also be made to delete and replace connectors. The link in footnote 2 to the NYSE Listed Company Manual and commentary would also be updated.

⁴⁰ See note 33, *supra*.

following would be replaced with “amended and restated.” “Have” and “are” would be changed to the past tense “had” and “were” in the final sentence.

- The following new whereas clause would be added immediately above the current last whereas clause: “WHEREAS, the Company now desires to amend and restate the Seventh Amended and Restated Agreement to reflect the acquisition of NYSE National, Inc. by the Company’s wholly-owned subsidiary NYSE Group, Inc.;;”.
- The definition of ETP Holder in Article I (Interpretation), Section 1.1 would be deleted and new definitions of an NYSE Arca ETP Holder and NYSE National ETP Holder would be added. The obsolete definition of NYSE Market (DE) would be deleted.⁴¹
- Article IX (Voting and Ownership Limitations), Section 9.1(a)(3)(C) would be amended to add “NYSE Arca” before “ETP Holder” and the defined term “NYSE Arca ETP Holder” to distinguish between the ETP Holders of NYSE Arca Equities and those of the Exchange. An obsolete reference to NYSE Market (DE) would also be deleted from Section 9.1(a)(3)(C).⁴²

Section 9.1(a)(3)(C) would be amended to add a new subsection (v) similar to those in place for the other NYSE Exchanges. The new subsection (v) would incorporate NYSE National into the existing restriction, such that the ICE Holdings board of directors would be restricted from adopting a resolution pursuant to clause (b) of Section 9.1(a)(2) unless the NYSE Holdings board of directors determines that, for so long as NYSE Holdings directly or indirectly controls NYSE National, Inc. (or

⁴¹ See note 33, *supra*.

⁴² See note 33, *supra*. Conforming changes to delete and replace connectors would also be made throughout.

its successor), neither such person nor any of its related persons is an ETP Holder (as defined in the bylaws of NYSE National, as such bylaws may be in effect from time to time) of NYSE National (“NYSE National ETP Holder”). The clause would also provide that any such person that is a related person of an ETP Holder shall hereinafter also be deemed to be an “NYSE National ETP Holder” for purposes of the agreement, as the context may require.

- Article IX, Section 9.1(a)(3)(D) would be amended to add “NYSE Arca” before “ETP Holder.” An outdated reference to NYSE Market (DE) would also be deleted.

Further, a new clause (v) would be added to Section 9.1(a)(3)(D) to incorporate NYSE National into the existing restriction on the NYSE Holdings Board of Directors, such that it would be restricted from adopting a resolution to approve the exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast on such matter for so long as NYSE Holdings controls NYSE National. The clause would provide that “for so long as the Corporation directly or indirectly controls NYSE National, neither such person nor any of its Related Persons is an NYSE National ETP Holder.”

- Article IX, Section 9.1(b)(3) would be amended to add a new subpart (G) to incorporate NYSE National into the existing restriction on the NYSE Holdings Board of Directors, so that it would provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Holdings directly or indirectly controls NYSE National (or its successor), the board of directors of NYSE Holdings shall not adopt any resolution pursuant to (b) of Section 9.1(b)(2) of the NYSE Holdings LLC Operating Agreement, unless the board of directors of NYSE Holdings shall have

determined that neither such person nor any of its related persons is an NYSE National ETP Holder.

Proposed Fifth Amended and Restated Certificate of Incorporation of NYSE Group, Inc.
(“NYSE Group Certificate of Incorporation”)

The NYSE Group Certificate of Incorporation is being amended as follows:

- On the first page, add “Fifth” and delete “Fourth” before “Amended and Restated Certificate of Incorporation” in the heading. The Recitations would be amended to reflect that this would be the fifth amendment and restatement. First, the Fifth Recitation would be updated to reflect that a Fourth Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on December 29, 2014. A new Sixth Recitation would be updated to reflect that the Fifth Amended and Restated Certificate of Incorporation has been duly adopted. The current Sixth Recitation would become the Seventh and would reflect that the Fourth Amended and Restated Certificate of Incorporation is amended and restated in its entirety.
- The Exchange would be added to the list of “Regulated Subsidiaries” in Article 4 (Stock), Section 4(b)(1), which currently includes the NYSE, NYSE Market (DE), NYSE Regulation, NYSE Arca, LLC, NYSE Arca Equities, and NYSE MKT, and the obsolete references to NYSE Market (DE) and NYSE Regulation would be deleted.
- To distinguish between the ETP Holders of NYSE Arca Equities and those of the Exchange, Section 4(b)(1)(y) of Article IV would be amended to define an ETP

Holder of NYSE Arca Equities as an “NYSE Arca Equities ETP Holder.” An outdated reference to NYSE Market (DE) would also be deleted.

Section 4(b)(1)(y) would also be amended to add a provision similar to those in place for the other NYSE Exchanges providing that, for so long as NYSE Group directly or indirectly controls NYSE National (or its successor), neither such Person nor any of its related persons is an ETP Holder (as defined in the rules of NYSE National, as such rules may be in effect from time to time) of NYSE National (defined as an “NYSE National NYSE National ETP Holder”) and that any such person that is a related person of an NYSE National ETP Holder shall hereinafter also be deemed to be an “NYSE National ETP Holder” for purposes of the certificate of incorporation, as the context may require.

- Further, subsection 4(b)(1)(z) of Article IV would be amended to define an ETP Holder of NYSE Arca Equities as an “NYSE Arca Equities ETP Holder” and delete an outdated reference to NYSE Market (DE).

Subsection 4(b)(1)(z) would also be amended to incorporate NYSE National into the existing restriction on the ICE Holdings Board of Directors, such that it would be restricted from adopting a resolution to approve the exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast on such matter, where neither such person nor any of its related persons is, with respect to NYSE National, an NYSE National ETP Holder.

- A new subpart (vii) would be added to subsection 4(b)(2)(C) of Article IV to incorporate NYSE National into the existing restriction on the NYSE Group Board of Directors, such that it would be restricted from adopting a resolution to approve the

exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast on such matter, where neither such person nor any of its related persons is, with respect to NYSE National, an NYSE National ETP Holder.⁴³

- Article X (Confidential Information) would be amended to extend the same protection to confidential information relating to the self-regulatory function of the Exchange or its successor and delete obsolete references to NYSE Market (DE) and NYSE Regulation.
- Article XII (Amendments to Certificate of Incorporation) provides that, for so long as NYSE Group controls the Regulated Subsidiaries, before any amendment or repeal of any provision of the Certificate of Incorporation shall be effective, such amendment or repeal shall either (a) be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder or (b) be submitted to the boards of directors of NYSE, NYSE Market (DE), NYSE Regulation, NYSE Arca, NYSE Arca Equities, and NYSE MKT or the boards of directors of their successors. Article XII would be amended to add NYSE National to subsection (b) and delete references to NYSE Market (DE) and NYSE Regulation.

Proposed Third Amended and Restated Bylaws of NYSE Group, Inc. (“NYSE Group Bylaws”)

The NYSE Group Bylaws are being amended as follows:

- Add “Third” and delete “Second” before “Amended and Restated Bylaws” in the heading to reflect that this would be the third amendment and restatement.

⁴³ An obsolete reference to NYSE Market (DE) would also be deleted from Article IV, 4(b)(2)(C)(v).

- Article VII (Miscellaneous), Section 7.9(A)(b) currently provides that, for so long as NYSE Group controls any of the NYSE Exchanges, any amendment to or repeal of the ICE Bylaws must either be (i) filed with or filed with and approved by the Commission under section 19 of the Exchange Act and the rules promulgated thereunder, or (ii) submitted to the boards of directors of the NYSE, NYSE Market (DE), NYSE Regulation, NYSE Arca, NYSE Arca Equities, and NYSE Alternext US LLC or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by ICE. Section 7.9(A)(b) would be amended to delete obsolete references to NYSE Market (DE) and NYSE Regulation, replace the outdated reference to “NYSE Alternext US LLC” with “NYSE MKT LLC,” and add NYSE National.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act⁴⁴ in general, and with Section 6(b)(1)⁴⁵ 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. Following the Acquisition, the Commission will continue to have the same plenary regulatory authority over NYSE National as it currently has over the Exchange. NYSE National would continue to be registered as a national

⁴⁴ 15 U.S.C. 78f(b).

⁴⁵ 15 U.S.C. 78f(b)(1).

securities exchange and would continue to be a separate SRO with separate rules, membership rosters, and listings distinct from its affiliates. The proposed rule change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to NYSE National and its directors, officers, employees and agents to the extent they are involved in its activities.

The proposed change would continue the requirement in the Bylaws that an independent board committee oversee the adequacy and effectiveness of the performance of the Exchange's self-regulatory responsibilities. As proposed, the ROC would be similar in composition and functions to the approved ROCs of other SROs, would be similarly designed to ensure the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; to assess the Exchange's regulatory performance; and to assist the Board and any other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions. Accordingly, the Exchange believes that the proposed amendment 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 amendment to the Bylaws is consistent with Section 6(b)(1) and not inconsistent with the 2005 Order.⁴⁶

⁴⁶ See Securities Exchange Act Release No. 51714 (May 19, 2005).

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act⁴⁷ in that it would create a governance and regulatory structure of NYSE National 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 described above, following the Acquisition, NYSE National would continue to be registered as a national securities exchange and as a separate SRO and, as such, would continue to have separate rules, membership rosters, and listings. Further, NYSE National's regulatory functions would be carried out by the NYSE's regulatory department under the oversight of the proposed ROC. The proposed changes are intended to protect and maintain the self-regulatory functions of NYSE National and to allow it to carry out its regulatory responsibilities under the Act. The Exchange also believes that the proposed rule change provides transparency and clarity, and promotes efficiency, with respect to the governance and corporate structure of NYSE National. In so doing, the proposed rule change promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

As discussed above, the Exchange believes that its proposal that the ROC be comprised 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, assessing regulatory performance, and assisting the board of directors in reviewing the regulatory plan and the overall effectiveness of the regulatory function. Moreover, the Exchange

⁴⁷ 15 U.S.C. 78f(b)(5).

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. 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.

The Exchange further believes that making non-substantive technical and conforming changes throughout its Certificate of Incorporation and Bylaws to reflect the Exchange's proposed new ownership, including updating corporate names, as well as the replacement of outdated or obsolete references in the corporate documents of the NYSE Group and its intermediary and ultimate parent entities, including the ICE bylaws and director independence policy, ICE Holdings bylaws and certificate of incorporation, NYSE Holdings operating agreement, and the NYSE Group bylaws and certificate of incorporation, removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having these references in the governing documents following the Acquisition. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The Exchange further believes that eliminating obsolete references would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential

confusion. Removing such obsolete references will also further the goal of transparency and add clarity to the Exchange's rules.

Finally, the proposal to retain, as modified, an Appeals Committee which, among other things, would be charged with hearing appeals of disciplinary determinations, complies with Section 6(b)(7) of the Exchange Act,⁴⁸ which, among other things, requires that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members. The Exchange proposes that the Appeals Committee shall be made up of at least one Public Director and at least one Non-Affiliated Director. The Exchange believes that continued member participation on the proposed Appeals Committee would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of 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 intended to address competitive issues but rather is concerned solely with the Acquisition. Indeed, the Exchange believes that providing a new corporate and governance structure, the Exchange will be in a better position to improve its technology and engage in value-enhancing transactions that will enable the Exchange to more effectively participate and compete in the marketplace.

⁴⁸ See 15 U.S.C. 78f(b)(7).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on 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 (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 such 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-NSX-2016-16 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-NSX-2016-16. 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-NSX-2016-16 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.⁴⁹

Robert W. Errett
Deputy Secretary

⁴⁹ 17 CFR 200.30-3(a)(12).