

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60542; File No. SR-NYSE-2009-60)

August 19, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change in connection with the Proposal of NYSE Euronext to Require that At Least Three-fourths of Its Directors Satisfy Independence Requirements

I. Introduction

On June 23, 2009, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend the Bylaws of its ultimate parent, NYSE Euronext (“Corporation”),<sup>4</sup> and the Corporation’s Director Independence Policy to require that at least three-fourths of the members of the Corporation’s Board of Directors (“Board”) satisfy independence requirements. The proposed rule change was published for comment in the Federal Register on July 16, 2009.<sup>5</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Section 10.10(C) of the Corporation’s Bylaws provides, among other things, that for so long as the Corporation shall control, directly or indirectly, any U.S. Regulated

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The NYSE, a New York limited liability company, is an indirect wholly-owned subsidiary of NYSE Euronext.

<sup>5</sup> See Securities Exchange Act Release No. 60261 (July 8, 2009), 74 FR 34609 (“Notice”).

Subsidiaries,<sup>6</sup> before any amendment or repeal of any provision of the Bylaws shall be effective, such amendment or repeal shall be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder.

Consistent with this requirement, NYSE filed this proposed rule change. Currently, the Corporation's Bylaws and Director Independence Policy require that all members of the Board, other than the Chief Executive Officer and the Deputy Chief Executive Officer, must satisfy the independence requirements for directors of the Corporation.<sup>7</sup> The proposed rule change would permit the Corporation to amend its Bylaws and Director Independence Policy to require that at least three-fourths of the members of the Board satisfy the independence requirements for directors of the Corporation.

The Exchange stated that the proposed amendment to the Bylaws and Director Independence Policy would not alter or amend the standards by which the Corporation determines whether an individual director is independent; would not affect the independence requirements of the Exchange with respect to its directors or the director independence requirements of any of the other self-regulatory organizations for which the Corporation is the ultimate parent or of NYSE Group, Inc., the intermediate holding company, including in each case the number of required independent directors; and would not affect other director qualification requirements set forth in the Bylaws of the

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<sup>6</sup> Section 7.3(G) of the Corporation's Bylaws defines "U.S. Regulated Subsidiaries" as New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, L.L.C., NYSE Arca, Inc., NYSE Arca Equities, Inc. and NYSE Alternext US LLC or their successors, in each case to the extent that such entities continue to be controlled, directly or indirectly, by the Corporation.

<sup>7</sup> See Section 3.4 of the Amended and Restated Bylaws of NYSE Euronext ("Bylaws").

Corporation.<sup>8</sup>

The Exchange further stated that the current board independence requirement eliminates from consideration as potential directors of the Corporation a substantial number of individuals who could contribute significantly to the deliberations of the Corporation's Board by virtue of their knowledge, ability, and experience. The Exchange believes that the proposed rule change would continue to protect the independent judgment of the Board, while permitting the Corporation to consider a broader range of experienced and knowledgeable individuals as directors.<sup>9</sup>

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>10</sup> which requires, among other things, that an exchange be so organized and have the capacity to be able to carry out the purposes of the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to

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<sup>8</sup> See e.g., Section 3.2 of the Bylaws (Certain Qualifications for the Board of Directors).

<sup>9</sup> There are currently 18 directors on the Board, including the Chief Executive Officer and the Deputy Chief Executive Officer. The Bylaws currently require 16 of the directors (i.e., all but the two aforementioned employees) to be independent. The proposed amendment to the Bylaws would require a minimum of 14 of the directors to be independent.

<sup>10</sup> 15 U.S.C. 78f(b)(1).

<sup>11</sup> 15 U.S.C. 78(f)(b)(5).

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.<sup>12</sup>

The Bylaws currently require that 16 of the 18 directors of the Corporation's Board (all the directors except the Chief Executive Officer and the Deputy Chief Executive Officer) must satisfy the Corporation's independence requirements. The Commission notes that the proposed rule change, which would require that at least three-fourths of the Board to be independent, would still require a minimum of 14 directors to satisfy the Corporation's independence requirements. The Commission also notes that the proposal would not alter the Corporation's standards for determining director independence. The Commission believes that the proposal strikes a reasonable balance between the goals of retaining highly qualified and experienced directors for Board service and protecting the exercise of independent judgment by the Corporation's Board.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that

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<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

the proposed rule change (SR-NYSE-2009-60) be, and hereby is, approved.

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

Florence E. Harmon  
Deputy Secretary

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