

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-67564; File Nos. SR-NYSE-2012-17; SR-NYSEArca-2012-59; SR-NYSEMKT-2012-07)

August 1, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; Order Granting Approval of Proposed Rule Changes Amending Independence Policy of the Board of Directors of NYSE Euronext and Creating a New Independence Policy for Boards of Directors of the New York Stock Exchange LLC, NYSE MKT LLC, NYSE Regulation, Inc. and NYSE Market, Inc.

I. Introduction

On June 6, 2012, New York Stock Exchange LLC (“Exchange”), and on June 8, 2012, NYSE Arca, Inc. (“NYSE Arca”), and NYSE MKT LLC (“NYSE MKT” and, together with the Exchange and NYSE Arca, the “NYSE Exchanges”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ proposed rule changes amending the Independence Policy of the board of directors (the “NYSE Euronext Board”) of NYSE Euronext (the “NYSE Euronext Director Independence Policy”) and creating a new Independence Policy (the “Regulated Subsidiary Director Independence Policy”) for each of the boards of directors of the Exchange, NYSE MKT, NYSE Regulation, Inc. (“NYSE Regulation”) and NYSE Market, Inc. (“NYSE Market” and, together with NYSE Regulation, the Exchange and NYSE MKT, the “Regulated Subsidiaries”). The proposed rule changes were published for comment in the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Federal Register on June 18, 2012.⁴ The Commission received no comment letters on the proposal.

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act,⁶ which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. Section 6(b) of the Act⁷ also requires that the rules of the exchange be designed to promote just and equitable principles of trade, 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.

II. Discussion

NYSE Euronext Director Independence Policy

⁴ See Securities Exchange Act Release Nos. 67185 (June 12, 2011), 77 FR 36321 (SR-NYSE-2012-17); 67186 (June 12, 2012), 77 FR 36307 (SR-NYSEArca-2012-59); 67184 (June 12, 2012), 77 FR 36324 (SR-NYSEMKT-2012-07).

⁵ In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ Id.

Under the proposed rule changes, the NYSE Exchanges would amend the NYSE Euronext Director Independence Policy and create the Regulated Subsidiary Director Independence Policy.⁸ Under the propose rule changes, the NYSE Euronext Director Independence Policy would be amended to reflect that (i) a majority (as opposed to 75%) of the NYSE Euronext Board would be required to be independent; (ii) executive officers of listed companies would no longer be prohibited from being considered independent for purposes of the NYSE Euronext Board; (iii) the “additional independence requirements” at the end of the current independence policy of NYSE Euronext, which provide that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated; (iv) references to certain European regulatory authorities would be updated, because their names have changed; (v) references to NYSE Alternext US LLC and NYSE Amex LLC would refer instead to NYSE MKT LLC, because of this entity’s previous name changes; and (vi) footnote 2 would be deleted because the NYSE Euronext Director Independence Policy would not be applicable to the Regulated Subsidiaries, each of which is proposed to have its own director independence policy.

The Commission finds that these proposals, taken together, are consistent with the Act, particularly Section 6(b)(1),⁹ which requires an exchange to be so organized and have the

⁸ In addition, the Exchange proposes to amend the Amended and Restated Bylaws of NYSE Euronext, the Amended and Restated Bylaws of NYSE Market, Inc., Third Amended and Restated Bylaws of NYSE Regulation, Inc., the Third Amended and Restated Operating Agreement of New York Stock Exchange LLC and the Second Amended and Restated Operating Agreement of NYSE MKT LLC to make certain conforming changes.

⁹ 15 U.S.C. 78f(b)(1).

capacity to carry out the purposes of the Act. The Commission previously considered and approved these changes to the NYSE Euronext Director Independence Policy in connection with the previously proposed combination of NYSE Euronext and Deutsche Börse AG (the “Combination”).¹⁰ The Commission notes that a majority of NYSE Euronext’s Board would still need to be independent. In addition, the Commission notes that as a company listed on the Exchange, NYSE Euronext’s board of directors must also satisfy the independence requirements applicable to a listed company’s board of directors as contained in the Exchange’s Listed Company Manual. Further, the Commission notes that there are requirements in the NYSE Euronext Director Independence Policy that independent directors may not be or have been within the last year, and may not have an immediate family member who is or within the last year was, a member of the Exchange, NYSE Arca or NYSE MKT.

Regulated Subsidiary Director Independence Policy

The Regulated Subsidiary Director Independence Policy to be adopted by each of the Exchange, NYSE Market, NYSE Regulation and NYSE MKT under the proposed rule changes would be substantially similar to the current Independence Policy of the NYSE Euronext Board, except that certain conforming changes would be made, including the deletion of provisions that currently apply only to NYSE Euronext directors and expressly do not apply to directors of these Regulated Subsidiaries. In particular, (i) references to NYSE Euronext would refer instead to the

¹⁰ See Securities Exchange Act Release No. 34-66171 (January 17, 2012) File Nos. SR-EDGA-2011-34; SR-EDGX-2011-33; SR-ISE-2011-69; SR-NYSE-2011-51; SR-NYSEAmex-2011-78; SR-NYSEArca-2011-72), 77 FR 3297 (January 23, 2012). The Combination was not completed and, therefore, the proposed rule changes conditionally approved by the Commission did not become effective. See, e.g., Securities Exchange Act Release No. 66662 (March 26, 2012), 77 FR 19396 (March 30, 2012) (SR-NYSE-2012-08).

relevant Regulated Subsidiary; (ii) the requirement that at least three-fourths of the directors must be independent would be deleted, since the organizational documents of these Regulated Subsidiaries contain the independence and other qualification requirements for directors; (iii) the requirement in the Independence Policy of NYSE Euronext that the board consider the special responsibilities of a director in light of NYSE Euronext’s ownership of U.S. regulated subsidiaries and European regulated entities would be deleted, because unlike NYSE Euronext, the Regulated Subsidiaries are not holding companies; (iv) the requirement for directors to inform the Chairman of the Nominating and Governance Committee of certain relationships and interests would be deleted, since the boards of these Regulated Subsidiaries do not have a Nominating and Governance Committee, except that in the Regulated Subsidiary Director Independence Policy to be adopted by NYSE Regulation, this provision would reference the Nominating and Governance Committee of NYSE Regulation; (v) references to NYSE Alternext, Inc. and NYSE Amex LLC would refer instead to NYSE MKT LLC, because of this entity’s previous name changes; (vi) because the current Independence Policy of NYSE Euronext provides that a director of an affiliate of a Member Organization” (as defined in the Regulated Subsidiary Director Independence Policy) cannot qualify as an independent director of these Regulated Subsidiaries, the conflicting language stating that a director of an affiliate of a Member Organization shall not per se fail to be independent would be deleted; and (vii) because language in the current Independence Policy of NYSE Euronext provides that an executive officer of an issuer whose securities are listed on a NYSE Exchange cannot qualify as an independent director of these Regulated Subsidiaries, the conflicting language providing an exception applicable only to NYSE Euronext directors would be deleted. In addition, the “additional independence requirements” at the end of the current Independence Policy of NYSE

Euronext, which provides that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated. This provision is designed to ensure that although persons who are directors of an affiliate of a Member Organization or who are executive officers of a “foreign private issuer” listed on a NYSE Exchange may in some circumstances qualify as independent for purposes of NYSE Euronext board membership, such persons may not, together with executive officers of NYSE Euronext, constitute more than a minority of the total NYSE Euronext directors. Under the proposed Regulated Subsidiary Director Independence Policy, such persons could not be deemed to be independent directors of the relevant Regulated Subsidiary and, accordingly, this limitation on the number of such persons who may serve on the board is unnecessary.

The Commission finds that these proposals, taken together, are consistent with the Act, particularly Section 6(b)(1),¹¹ which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act. Further, the Commission notes that the NYSE Exchanges are not proposing to change any of the provisions relating to (i) the fair representation of the members of each of the NYSE Exchanges in the selection of its directors and administration of its affairs or (ii) one or more of the directors of each of the NYSE Exchanges being representative of issuers and investors and not being associated with a member of the exchange or with a broker dealer, each as required under Section 6(b)(3) of the Act.¹²

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is

¹¹ 15 U.S.C. 78f(b)(1).

¹² 15 U.S.C. 78f(b)(3).

consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹³ that the proposed rule changes (SR-NYSE-2012-17; SR-NYSEArca-2012-59; SR-NYSEMKT-2012-07), are approved.

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

Kevin M. O'Neill
Deputy Secretary

¹³

Id.

¹⁴

17 CFR 200.30-3(a)(12).