

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83892; File No. SR-NYSE-2018-38)

August 21, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Independence Policy of the Board of Directors of the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 15, 2018, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Independence Policy of the Board of Directors of the Exchange by (a) streamlining references to Intercontinental Exchange, Inc. subsidiaries that are national securities exchanges, (b) removing obsolete references, and (c) adding references to national securities exchange affiliates of the Exchange. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to amend the Independence Policy by (a) streamlining references to ICE subsidiaries that are national securities exchanges, (b) removing obsolete references, and (c) adding references to national securities exchange affiliates of the Exchange.

Definition of “Exchange”

The Independence Policy includes references to the Exchange and its national securities exchange affiliates NYSE American, Inc. (“NYSE American”) and NYSE Arca, Inc. (“NYSE Arca”).³ It does not include references to the Exchange’s newest national securities exchange affiliates, NYSE National, Inc. (“NYSE National”) and Chicago Stock Exchange, Inc. (“CHX”). The Exchange proposes to replace lists of individual national securities exchange affiliates in the Independence Policy with the term “Exchange,” defined as any national securities exchange registered under Section 6 of the Exchange Act⁴ and controlled, directly or indirectly, by ICE. The definition would encompass the Exchange, NYSE American, NYSE Arca, NYSE National, and CHX (collectively, the “SRO Affiliates”).

Specifically, the Exchange proposes to add a second paragraph under “Purpose” with the

³ The independence policy of the board of directors of the Exchange’s affiliate NYSE American is substantially the same as the Independence Policy. NYSE American has submitted substantially the same proposed rule change to its independence policy as described herein. See SR–NYSEAmer–2018–42.

⁴ 15 U.S.C. 78f.

definition of “Exchange.”⁵ In addition, the Exchange proposes to make the following changes in the section under “Independence Qualifications”:

- Replace “New York Stock Exchange LLC, NYSE Arca, Inc. and NYSE American LLC” with “an Exchange” in category 1(b) and (c);
- Replace “New York Stock Exchange LLC, on NYSE Arca, Inc. or on NYSE American LLC” with “an Exchange” in category 1(d) and category 4;
- Replace “New York Stock Exchange LLC, and NYSE Arca, Inc. and NYSE American LLC exercise” with “each Exchange exercises” in the final paragraph of category 1;
- Replace “New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc. and NYSE American LLC” with “each Exchange” in category 2; and
- Replace “New York Stock Exchange LLC, NYSE Arca, Inc. or NYSE American LLC” with “an Exchange” under “Listed Companies.”

The proposed changes would make the requirements under “Independence Qualifications” and “Listed Companies” apply to all of the Affiliate SROs, and not just those specifically listed in the Independence Policy. In addition, it would make the Independence Policy consistent with the governing documents of ICE and the intermediate holding companies between the Exchange and ICE, which use the term “Exchange.”⁶

⁵ The proposed text would include the definition of “ICE.” Accordingly, the Exchange proposes to delete the definition of ICE in “Independence Requirements,” category 1.

⁶ See Securities Exchange Act Release No. 82081 (November 15, 2017), 82 FR 55474 (November 21, 2017) (SR-NYSE-2017-57). NYSE Group, Inc. (“NYSE Group”) owns all of the equity interest in the Exchange. In turn, NYSE Group is a wholly-owned subsidiary of NYSE Holdings LLC, which is wholly owned by Intercontinental Exchange

Removal of Obsolete References

The Exchange no longer has allied members.⁷ Accordingly, the Exchange proposes to delete the text “paragraph (c) of Rule 2 of the New York Stock Exchange LLC and” from category 1(b) of “Independence Qualifications.”

NYSE Arca Equities, Inc. merged with NYSE Arca, Inc., and therefore no longer exists.⁸ Accordingly, under “Independence Qualifications,” the text “Rule 1.1(c) of NYSE Arca Equities, Inc.” in category 1(b) and references to NYSE Arca Equities, Inc. in category 5 would be deleted.⁹

The proposed removal of obsolete references would be consistent with changes made to the independence policy of the board of directors of ICE.¹⁰

References to SRO Affiliates

NYSE National became an Affiliate SRO in 2017. Accordingly, the Exchange proposes to add “Person Associated with an ETP Holder” (as defined in Rule 1.5 of NYSE National, Inc.);” in category 1(b), and add NYSE National to category 5 under “Independence Qualifications.” The changes would be consistent with changes made to the independence policy

Holdings, Inc., which is wholly owned by ICE. ICE is a public company listed on the NYSE.

⁷ See Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR-NYSE-2008-80) (notice of filing and immediate effectiveness of proposed rule change and Amendment No. 1 thereto conforming certain NYSE rules to changes to NYSE incorporated rules recently filed by the Financial Industry Regulatory Authority, Inc.).

⁸ See Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40).

⁹ The reference to NYSE Arca Equities, Inc. in category 2 would be deleted and replaced with “each Exchange,” as proposed above.

¹⁰ See Securities Exchange Act Release No. 83342 (May 30, 2018), 83 FR 26125 (June 5, 2018) (SR-NYSE-2018-19).

of the board of directors of ICE.¹¹

CHX became an Affiliate SRO in 2018.¹² The Exchange proposes to add a reference to CHX to category 5 under “Independence Qualifications.” As CHX does not have terms equivalent to “allied members” or “approved persons,” the Exchange does not propose to add references to CHX to the clause following “(collectively, ‘Members’)” in category (1)(b). The changes would be consistent with changes made to the independence policy of the board of directors of ICE.¹³

The Exchange proposes to update the link included in footnote 2 and make conforming changes to delete and replace connectors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act¹⁴ in general, and with Section 6(b)(1)¹⁵ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the

¹¹ See Securities Exchange Act Release No. 79901 (January 30, 2017), 82 FR 9251 (February 3, 2017) (SR-NYSE-2016-90; SR-NYSEArca-2016-167; SR-NYSEMKT-2016-122).

¹² See Securities Exchange Act Release No. 83635 (July 13, 2018), 83 FR 34182 (July 17, 2017) (SR-CHX-2018-004).

¹³ See 83 FR 26125, supra note 10.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(1).

proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,¹⁶ in that it 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 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.

The Exchange believes that the proposed replacement of lists of individual SRO Affiliates in the Independence Policy with the term “Exchange” would contribute to the orderly operation of the Exchange, because use of the term would make the requirements under “Independence Qualifications” and “Listed Companies” apply to all of the Affiliate SROs, and not just those specifically listed in the Independence Policy. The Exchange Act definition of “exchange” states that “exchange” “includes the market place and the market facilities maintained by such exchange.”¹⁷ Accordingly, all market places and market facilities maintained by an Exchange would fall within the definition of Exchange and therefore would fall within the scope of the Independence Policy. In addition, the Exchange notes that the proposed change would make the Independence Policy consistent with the governing documents of ICE and the intermediate holding companies between the Exchange and ICE, which use the term “Exchange.” Making the terminology used in the governing documents and the Independence Policy more consistent would add clarity and transparency to the Exchange Rules.

For the same reason, the Exchange believes that the proposed replacement of lists of individual SRO Affiliates in the Independence Policy with the term “Exchange” would remove

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78c(a)(1).

impediments to and perfect the mechanism of a free and open market. The changes would simplify and streamline the Exchange's rules while making them more consistent, thereby ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Independence Policy and the Exchange Rules.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest by (a) removing obsolete references to NYSE allied members and NYSE Arca Equities, Inc., and (b) incorporating NYSE National and CHX into the text of the Independence Policy. The Exchange believes that such changes would add clarity and transparency to the Exchange Rules by removing any confusion that may result if the Independence Policy retained obsolete references or did not encompass all of the Affiliate SROs. For the same reason, the Exchange believes that the proposed amendments to the Independence Policy would remove impediments to and perfect the mechanism of a free and open market and a national market system by removing confusion that may result if the Independence Policy retained obsolete references or did not include all of the Affiliate SROs.

The Exchange notes that the proposed change would be consistent with changes made to the independence policy of the board of directors of ICE, and believes that making the Independence Policy more consistent with the ICE policy would add clarity and transparency to the Exchange Rules, allowing persons subject to the Exchange's jurisdiction, regulators, and investors to more easily navigate and understand the Exchange Rules, contributing to the orderly operation of the Exchange. The Exchange further believes that the proposed changes 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 clarity, thereby reducing potential confusion.

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 updating the Independence Policy to (a) streamline references to ICE subsidiaries that are national securities exchanges, (b) remove obsolete references, and (c) add references to NYSE National and CHX.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6).

19b4(f)(6)(iii),²¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²² of the Act to determine whether the proposed rule change should be approved or 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-NYSE-2018-38 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.

²¹ 17 CFR 240.19b-4(f)(6)(iii).

²² 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSE-2018-38. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSE-2018-38 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.²³

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²³ 17 CFR 200.30-3(a)(12).