

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63942; File No. SR-NYSEARCA-2011-04)

February 22, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change in Connection with the Proposal of NYSE Euronext to Eliminate the Requirement of an 80% Supermajority Vote to Amend or Repeal Section 3.1 of its Bylaws

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on February 11, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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

The Exchange is submitting this rule filing in connection with the proposal of its ultimate parent, NYSE Euronext (the “Corporation”),⁴ to amend its bylaws (the “Bylaws”) to eliminate the requirement that the affirmative vote of the holders of not less than 80% of the votes entitled to be cast by the holders of the outstanding capital stock of the Corporation entitled to vote generally in the election of directors is necessary for the stockholders to amend or repeal Article III, Section 3.1 of the Bylaws. The proposed rule change is identical to a rule change filed by the New York Stock Exchange LLC (“NYSE”) that was recently approved by the Commission.⁵

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ NYSE Arca, a Delaware corporation, is an indirect wholly-owned subsidiary of NYSE Euronext.

⁵ Securities Exchange Act Release No. 63792 (January 28, 2011) (File No. SR-NYSE-

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and the Exchange's website at www.nyse.com.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting this rule filing in connection with the proposal of the Corporation, which is the ultimate parent company of the Exchange, to amend its Bylaws to eliminate the requirement that the affirmative vote of the holders of not less than 80% of the votes entitled to be cast by the holders of the outstanding capital stock of the Corporation entitled to vote generally in the election of directors is necessary for the stockholders to amend or repeal Article III, Section 3.1 of the Bylaws relating to the general powers of the Board of Directors of the Corporation ("Board"). Section 3.1 also provides that the number of Directors on the Board shall be fixed and changed from time to time exclusively by the Board pursuant to a resolution adopted by two-thirds of the directors then in office. Elimination of this 80% "supermajority" voting provision as it relates to Section 3.1 will have the effect that only a majority of the same number of votes entitled to be cast will be required to amend or repeal this section of the Bylaws.

2010-77).

Background

In connection with its 2010 Annual Meeting, the Corporation received a stockholder proposal to eliminate the supermajority voting requirements necessary to amend certain provisions of the Corporation's certificate of incorporation ("Certificate") and Bylaws. Following receipt of that proposal, the Corporation began discussions with its regulators regarding the possibility of amending its Certificate and Bylaws to implement the proposal. While recognizing the interest of stockholders in simple majority voting to amend these basic governing documents, the Corporation was also cognizant of the fact that, at the time of the merger between Euronext and NYSE Group that created the Corporation, both European and U.S regulators were concerned about insuring a balance of U.S. and European perspectives in the governance of the newly formed entity. The regulators and the respective boards of directors viewed the combination of Euronext and NYSE Group as a "merger of equals," and balanced representation between American and European representatives on the Board was the primary means by which the principle of equality was to be implemented. The regulatory authorities approved supermajority voting to amend the governance provisions in the Certificate and Bylaws considered to be most important in maintaining this balance.

Following further discussions between the Corporation and its regulators, the regulators have indicated that they would not oppose a change to a simple majority provision for certain of the provisions currently subject to an 80% voting requirement, including Article III, Section 3.1 of the Bylaws. Section 3.1 reads as follows:

"General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The number of directors on the Board of Directors shall be fixed and changed from time to time exclusively by the Board of Directors

pursuant to a resolution adopted by two-thirds of the directors then in office. In addition to the powers and authorities expressly conferred upon them by these Bylaws, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders. A director need not be a stockholder.”

The purpose of this proposed rule change is to implement the decision of the Board to remove the 80% supermajority voting requirement with respect to the aforementioned Bylaw provision.

As noted above, the proposed rule change is identical to a rule change filed by the NYSE (the “NYSE Rule Change”) that was recently approved by the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁶ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)⁷ in particular 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. More specifically, the Exchange believes that the proposed rule change will permit the Corporation to respond to the stockholder proposal submitted to it while also ensuring ongoing regulatory comfort concerning balanced representation in the governance of the Corporation which will thereby contribute to perfecting the mechanism of a free and open market and a national market system, consistent with the protection of investors and the public interest.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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 Act.

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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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) by its terms, 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)¹⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

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.

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-NYSEARCA-2011-04 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR- NYSEARCA-2011-04. 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, 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-NYSEARCA-2011-04 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.¹²

Cathy H. Ahn
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).