

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69325; File No. SR-NYSEArca-2013-17)

April 5, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Amending Its Rules to Reflect the Merger of NYSE Arca Holdings, Inc., An Intermediate Holding Company, Into and With NYSE Group, Inc., Thereby Eliminating NYSE Arca Holdings, Inc. From the Ownership Structure of the Exchange

I. Introduction

On February 7, 2013, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed rule changes to reflect the merger of NYSE Arca Holdings, Inc. (“NYSE Arca Holdings”), an intermediate holding company, into and with NYSE Group, Inc. (“NYSE Group”), thereby eliminating NYSE Arca Holdings from the ownership structure of the Exchange (the “Merger”). The proposed rule changes were published for comment in the Federal Register on February 26, 2013.<sup>3</sup> 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.<sup>4</sup> This order approves the proposed rule changes.

II. Description

NYSE Euronext intends to merge NYSE Arca Holdings with and into NYSE Group,

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 68959 (February 20, 2013), 78 FR 13103 (“Notice”).

<sup>4</sup> 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).

effective following approval of the proposed rule changes.<sup>5</sup> According to the Exchange, the reason for the Merger is to eliminate an unnecessary intermediate holding company.<sup>6</sup> Following the Merger, the Exchange would be wholly-owned by NYSE Group (as its two affiliate exchanges, New York Stock Exchange LLC (“NYSE”) and NYSE MKT LLC (“NYSE MKT”), are), which in turn would be wholly-owned by NYSE Euronext.

The Exchange has submitted its proposal to (i) delete in its entirety the Second Amended and Restated Certificate of NYSE Arca Holdings (the “NYSE Arca Holdings Certificate”), (ii) delete in its entirety the Amended and Restated Bylaws of NYSE Arca Holdings (“NYSE Arca Holdings Bylaws”); (iii) amend the rules of NYSE Arca, Inc. (“NYSE Arca”); (iv) amend the Bylaws of NYSE Arca (“NYSE Arca Bylaws”); and (v) file the resolution (the “Resolution”) of the Board of Directors of NYSE Arca (the “NYSE Arca Board”) in connection with the Merger.

Section 19(b) of the Act and Rule 19b-4 thereunder require a self-regulatory organization (“SRO”) to file proposed rule changes with the Commission. Although NYSE Arca Holdings is not an SRO, the NYSE Arca Holdings Certificate and NYSE Arca Holdings Bylaws, along with other corporate documents, are rules of the Exchange<sup>7</sup> and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b-4 thereunder. Accordingly, the Exchange filed the NYSE Arca Holdings Certificate and NYSE Arca Holdings Bylaws with the Commission, along with other corporate governance documents.<sup>8</sup>

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<sup>5</sup> Currently, NYSE Arca Holdings, Inc. owns all of the equity interest of the Exchange. NYSE Group owns all of the equity interest of NYSE Arca Holdings. NYSE Euronext owns all of the equity interest of NYSE Group.

<sup>6</sup> See Notice, supra note 3, at 13103.

<sup>7</sup> See Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27).

<sup>8</sup> The Exchange proposes to delete the entirety of the Second Amended and Restated Certificate of Incorporation of NYSE Arca Holdings and the Amended and Restated Bylaws of NYSE Arca Holdings, attached as Exhibit A and Exhibit B, respectively, to

The proposed rule changes reflect the elimination of NYSE Arca Holdings from the Exchange’s ownership structure and delete duplicative or obsolete text. For example, the Exchange proposes to replace references to NYSE Arca Holdings in Sections 2.01 and 3.13 of the NYSE Arca Bylaws with references to NYSE Group.<sup>9</sup> The Exchange also proposes to delete Sections 2.02, 2.04 and 2.05 of the NYSE Arca Bylaws which relate to scheduling meetings of the Holding Member. The Exchange states that the Second Amended and Restated Bylaws of NYSE Group already include provisions for meetings of NYSE Group’s stockholders and Board of Directors.<sup>10</sup> The Exchange also represents that the operating agreements of the Exchange’s affiliated SROs, the NYSE and NYSE MKT, do not contain provisions relating to annual meetings of NYSE Group.<sup>11</sup>

The Exchange proposes to amend Section 3.02(f) of the NYSE Arca Bylaws to provide that, except as otherwise provided in the NYSE Arca Bylaws or rules, the Holding Member shall nominate directors for election at the Holding Member’s annual meeting.<sup>12</sup> The Exchange notes that the NYSE Arca Bylaws and rules do not have any other provisions concerning the nomination of non-fair representation directors.<sup>13</sup> Accordingly, this proposed rule change will

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the Notice. The Exchange also filed the proposed rule changes to its rules as the proposed Amended and Restated NYSE Arca Bylaws and rules, attached as Exhibit C and Exhibit D, respectively, to the Notice. The Exchange also filed the Resolution as Exhibit E to the Notice. These exhibits are available on the Commission’s website (<http://www.sec.gov/rules/sro.shtml>) and at the Commission’s Public Reference Room.

<sup>9</sup> As a result of this change NYSE Group will replace NYSE Arca Holdings as the “Holding Member” for purposes of the NYSE Arca Bylaws.

<sup>10</sup> See Notice, *supra* note 3, at 13104.

<sup>11</sup> See *id.*

<sup>12</sup> Currently, Section 3.02(f) provides that “[e]xcept as otherwise provided in these Bylaws or the Rules, the Nominating Committee of NYSE Arca Holdings, Inc. Holding Member shall nominate directors for election at the annual meeting of the Holding Member.”

<sup>13</sup> See Notice, *supra* note 3, at 13104.

not have any impact on the current process for the nomination and selection of fair representation directors of the Exchange and NYSE Arca Equities, Inc. (“NYSE Arca Equities”).<sup>14</sup>

### III. Discussion

The Commission 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.<sup>15</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>16</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 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 proposal would accommodate the merger of NYSE Arca Holdings, an intermediate holding company, into and with NYSE Group, thereby eliminating NYSE Arca Holdings from the ownership structure of the Exchange. The Commission notes that the proposed rule changes would otherwise have no substantive impact on other rules of the Exchange, including those concerning the nomination and selection of fair representation directors that currently apply to the Exchange. The Exchange would continue as an indirect wholly-owned subsidiary of NYSE Euronext. In addition, the Commission notes that the NYSE Arca Board made certain findings set forth in the Resolution that the proposed rule changes to NYSE Arca’s Bylaws are consistent

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<sup>14</sup> See Notice, supra note 3 at 13104.

<sup>15</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>16</sup> 15 U.S.C. 78f(b)(5).

with the restrictions on amending NYSE Arca's Bylaws.<sup>17</sup>

In light of these representations and findings, the Commission believes that the proposed rule changes are consistent with the Act and will not impair the ability of the Commission or the Exchange to discharge their respective responsibilities under the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSEArca-2013-17) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>17</sup> See Resolution.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).