

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73151; File No. SR-NYSEARCA-2014-106)

September 19, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 2.100(a) to Correct Potential Ambiguities Introduced in Prior Rule Change Filings Submitted in 2013 and 2014

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> notice is hereby given that, on September 15, 2014, 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 and II 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 proposes to amend NYSE Arca Equities Rule 2.100(a) to correct potential ambiguities introduced in prior rule change filings submitted in 2013 and 2014. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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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.

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 proposes to amend NYSE Arca Equities Rule 2.100(a) to correct potential ambiguities introduced in prior rule change filings submitted in 2013 and 2014. More specifically, as a result of overlapping amendments in 2013 and 2014, potential ambiguity as to the approved text of Rule 2.100(a) of the rule was introduced, as discussed in greater detail below. In order to establish the approved text definitively, the Exchange accordingly proposes to amend existing Rule 2.100(a)(2)(A).

On June 14, 2013, the Exchange filed a proposed rule change relating to the acquisition by IntercontinentalExchange Group, Inc. (now known as Intercontinental Exchange, Inc. or “ICE”) of the Exchange’s indirect parent company, NYSE Euronext (the “June 2013 Rule Change”).<sup>4</sup> The June 2013 Rule Change included non-substantive amendments to Rule 2.100(a)(3)(ii) to replace two references to NYSE Euronext with references to IntercontinentalExchange Group, Inc., which would be the new public holding company above NYSE Euronext. No other amendments to Rule 2.100(a) were

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<sup>4</sup> See Securities Exchange Act Release No. 69850 (June 25, 2013), 78 FR 39352 (July 1, 2013) (SR-NYSEArca-2013-62) (notice).

proposed. The Commission approved the June 2013 Rule Change on August 15, 2013.<sup>5</sup> However, the June 2013 Rule Change by its terms did not become operative until the closing of ICE's acquisition of NYSE Euronext, which occurred on November 13, 2013.

On July 22, 2013, after publication of notice of the June 2013 Rule Change but prior to issuance of the approval order, the Exchange filed an additional proposed rule change that made substantive changes to Rule 2.100 to better delineate the self-regulatory organization functions of the Exchange and affiliated exchanges during an emergency condition, reflect the operational preferences of the industry, reflect the current structure of market participant connectivity to and system coding for exchange systems, and add NYSE MKT LLC as an affiliated exchange (the "July 2013 Rule Change").<sup>6</sup> As part of the July 2013 Rule Change, the Exchange renumbered Rule 2.100(a), and moved the text previously found in Rule 2.100(a)(3)(ii) to new paragraph Rule 2.100(a)(2)(A). The renumbering of former Rule 2.100(a)(3)(ii) did not include any substantive changes to that rule text. The July 2013 Rule Change was approved and effective on November 6, 2013.<sup>7</sup>

Because the July 2013 Rule Change was effective prior to the operative date of the June 2013 Rule Change, it did not reflect the change from NYSE Euronext to IntercontinentalExchange Group, Inc. made in the June 2013 Rule Change. In addition, the June 2013 Rule Change was not amended after effectiveness of the July 2013 Rule

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<sup>5</sup> See Securities Exchange Act Release No. 70210 (Aug. 15, 2013), 78 FR 51758 (Aug. 21, 2013) (SR-NYSEArca-2013-62) (approval order).

<sup>6</sup> See Securities Exchange Act Release No. 70097 (Aug. 2, 2013), 78 FR 48528 (Aug. 8, 2013) (SR-NYSEArca-2013-77) (notice).

<sup>7</sup> See Securities Exchange Act Release No. 70822 (Nov. 6, 2013), 78 FR 68128 (Nov. 13, 2013) (SR-NYSEArca-2013-77) (approval order).

Change to conform the unamended rule text. As a result, when ICE's acquisition of NYSE Euronext closed on November 13, 2013 and the June 2013 Rule Change was intended to take effect, the text of Rule 2.100(a) in Exhibit 5 to the rule filing (i.e. the text before the proposed amendment) did not correspond with the text as recently amended by the July 2013 Rule Change. However, when the changes associated with the June 2013 Rule Change were made to Rule 2.100(a) on the Exchange's website, the change from NYSE Euronext to IntercontinentalExchange Group, Inc. was made, even though the rule text appeared under new rule numbering.

In a further proposed rule change filed on May 5, 2014, the Exchange proposed to amend Rule 2.100(a) to reflect the change of name from IntercontinentalExchange Group, Inc. to Intercontinental Exchange, Inc. (the "May 2014 Rule Change").<sup>8</sup> The base text of Rule 2.100(a) in this filing did not reflect the renumbering of the rule text in the July 2013 Rule Change, but did reflect the June 2013 Rule Change.<sup>9</sup> The May 2014 Rule Change was effective, and designated operative, upon filing.

As a consequence of this series of overlapping rule change filings, there is potential ambiguity as to whether the assumption by officers of ICE in 2013 of the roles formerly assigned to officers of NYSE Euronext, and the subsequent change in ICE's

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<sup>8</sup> See Securities Exchange Act Release No. 72157 (May 13, 2014), 79 FR 28792 (May 19, 2014) (SR-NYSEArca-2014-52) (notice of filing and immediate effectiveness).

<sup>9</sup> Exhibit 5 to the May 2014 Rule Change included the text of a Rule 2.100(a)(1) as part of such exhibit, but did not propose any changes to that provision. The base text of Rule 2.100(a)(1) in Exhibit 5 to the May 2014 Rule Change did not reflect the changes made in the July 2013 Rule Change, which became effective on November 6, 2013. However, the changes to Rule 2.100(a)(1) made in the July 2013 Rule Change are correctly reflected on the Exchange's website and the Exhibit 5 to this filing.

name in 2014, are accurately reflected in Rule 2.100(a). The Exchange believes there is no ambiguity as to the intent of any of the rule change filings or as to the intended text of Rule 2.100(a) as there were no substantive changes made in the July 2013 Rule Change to Rule 2.100(a)(3), only a renumbering of paragraphs. Accordingly, the Exchange proposes to amend the version of Rule 2.100(a) as it currently appears on the Exchange's website, to replace the reference to IntercontinentalExchange Group, Inc., with the correct reference to Intercontinental Exchange, Inc., as provided for in the May 2014 Rule Change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>10</sup> in general, and Section 6(b)(5) of the Act,<sup>11</sup> 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. The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by clarifying rule text to reflect the correct corporate entity, as intended in the May 2014 Rule Change.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any

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

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

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address any competitive issues and relates to non-substantive clarifications of one rule only

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

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 for 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<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>15</sup> 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

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange to correct any ambiguity as to its current rule created by its prior rule filings, which were either previously approved by the Commission or effective on filing.<sup>16</sup> For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>17</sup>

At any time within 60 days of the filing of the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2014-106 on the subject line.

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<sup>16</sup> See supra notes 4-8.

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments:

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

All submissions should refer to File Number SR-NYSEARCA-2014-106. 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; 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-2014-106 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.<sup>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).