

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-70210; File Nos. SR-NYSE-2013-42; SR-NYSEMKT-2013-50; SR-NYSEArca-2013-62)

August 15, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to a Corporate Transaction in which NYSE Euronext Will Become a Wholly-Owned Subsidiary of InternationalExchange Group, Inc.

I. Introduction

On June 14, 2013, each of New York Stock Exchange LLC (“Exchange”), NYSE MKT LLC (“NYSE MKT”), and NYSE Arca, Inc. (“NYSE Arca” and, with the Exchange and NYSE MKT, the “NYSE Exchanges”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> proposed rule changes in which New York Stock Exchange Holdings LLC (“NYX Holdings”), the successor entity to the NYSE Exchanges’ indirect parent, NYSE Euronext (“NYSE Euronext”), will become a wholly-owned subsidiary of InternationalExchange Group, Inc. (“ICE Group”). The proposed rule changes were published for comment in the Federal Register on July 1, 2013.<sup>4</sup> The Commission received one comment letter on the NYSE proposal.<sup>5</sup> The Exchange filed a response to these comments on August 8,

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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.

<sup>4</sup> See Securities Exchange Act Release Nos. 69851 (June 25, 2013), 78 FR 39407 (July 1, 2013) (SR-NYSE-2013-42) (“Notice”); 69849 (June 25, 2013), 78 FR 39369 (July 1, 2013)(SR-NYSEMKT-2013-50) (“NYSEMKT Notice”); 69850 (June 25, 2013), 78 FR 39352 (July 1, 2013) (SR-NYSEArca-2013-62) (“NYSE Arca Notice”).

<sup>5</sup> See Letter to Commission, from Andrew Rothlein, dated July 11, 2013 (“Rothlein Letter”).

2013.<sup>6</sup>

The Commission has reviewed carefully the proposed rule changes, the comment letter, 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>7</sup> In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act,<sup>8</sup> 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 Act<sup>9</sup> 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

The Exchange, NYSE MKT and NYSE Arca have submitted their proposed rule changes

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<sup>6</sup> See letter from Janet McGinness, NYSE, to Elizabeth M. Murphy, Secretary, Commission, dated August 8, 2013 (“NYSE Response to Comment”). On August 12, 2013, the Commission received a rebuttal letter to the NYSE Response to Comments (the “Rothlein Rebuttal Letter”).

<sup>7</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).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> Id.

in connection with the proposed business combination (the “Combination”) pursuant to which NYSE Euronext’s successor entity, NYSE Euronext Holdings LLC (“NYX Holdings”), will become a wholly-owned subsidiary of ICE Group.

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (“NYSE Group”), which in turn directly or indirectly owns (1) 100% of the equity interest of the NYSE Exchanges and, (2) 100% of the equity interest of NYSE Market (DE), Inc. (“NYSE Market”), NYSE Regulation, Inc. (“NYSE Regulation”), NYSE Arca L.L.C., NYSE Arca Equities, Inc. (“NYSE Arca Equities”) and NYSE Amex Options LLC (“NYSE Amex Options”) (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca L.L.C., NYSE Arca Equities, NYSE Amex Options and any similar U.S. regulated entity acquired, owned or created after the date hereof, the “U.S. Regulated Subsidiaries” and each, a “U.S. Regulated Subsidiary”).

IntercontinentalExchange, Inc. (“ICE”) is an operator of regulated exchanges and clearing houses serving the risk management needs of global markets for agricultural, credit, currency, emissions, energy and equity index products. ICE owns ICE Futures Europe, ICE Futures U.S., Inc., ICE Futures Canada, Inc., ICE U.S. OTC Commodity Markets, LLC, and five central counterparty clearing houses, including ICE Clear Europe Limited and ICE Clear Credit LLC, each of which is registered as a clearing agency under Section 17A of the Exchange Act,<sup>10</sup> ICE Clear U.S., Inc., ICE Clear Canada, Inc., and The Clearing Corporation, and owns 100% of the equity in Creditex Group Inc., which in turn indirectly owns Creditex Securities Corporation. Neither ICE Group nor any company owned by it directly or indirectly, including, but not limited

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<sup>10</sup> 15 U.S.C. 78q-1.

to, those referenced in this paragraph, is a registered national securities exchange or a member of any U.S. Regulated Subsidiary.

As a result of the Combination, the businesses of ICE and NYSE Euronext, including the U.S. Regulated Subsidiaries, will be held under ICE Group as a single publicly traded holding company that will be listed on the Exchange. The proposed rule changes are necessary to effectuate the consummation of the Combination and will not be operative until the date of the consummation of the Combination (the “Closing Date”). The proposed rule changes and exhibits thereto contain modifications to the underlying corporate governance documents of the U.S. Regulated Subsidiaries and their respective direct and indirect owners that reflect the current structure of the Combination. The Commission notes that any changes to the structure of the Combination that are made subsequent to the date of this approval order but prior to the Closing Date may be considered additional proposed rule changes required to be filed with and approved by the Commission pursuant to Section 19 of the Act.<sup>11</sup> In addition, the Commission notes that, if the Combination is not consummated, the proposed rule changes will not become effective.

A. Corporate Structure

Following the Combination, the successor to NYSE Euronext, the NYSE Exchanges’ indirect parent, NYX Holdings, will be a wholly-owned subsidiary of ICE Group.<sup>12</sup> ICE Group

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<sup>11</sup> 15 U.S.C. 78s.

<sup>12</sup> ICE Group is currently a wholly-owned subsidiary of ICE. ICE Group in turn has two wholly-owned subsidiaries, ICE Merger Sub, a Delaware corporation, and NYSE Euronext Merger Sub, a Delaware limited liability company. To effect the Combination, (1) ICE Merger Sub will be merged with and into ICE (the “ICE Merger”), with ICE as the surviving corporation and a wholly-owned subsidiary of ICE Group, and (2) immediately following the ICE Merger, NYSE Euronext shall be merged with and

will hold all of the equity interests in ICE, which will continue its current operations, and in NYX Holdings, which will hold (1) 100% of the equity interests of NYSE Group (which, in turn, would continue to directly or indirectly hold 100% of the equity interests of the U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (“Euronext”) (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom). ICE’s common stock is listed on the Exchange under the symbol “ICE,” and following the completion of the Combination, ICE Group common stock is expected to be listed for trading on the Exchange under the same symbol.

The NYSE Exchanges represent that the Combination will have no effect on the ability of any party to trade securities on the NYSE Exchanges. Other than as described herein, the NYSE Exchanges also represent that ICE Group will not make any changes to the regulated activities of the U.S. Regulated Subsidiaries in connection with the Combination. If ICE Group determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission.

A core aspect of the structure of the Combination is that it would maintain local regulation of the marketplace, members, and issuers. Therefore, securities exchanges, members, and issuers of the U.S. Regulated Subsidiaries will continue to be regulated in the same manner as they are currently regulated. The Commission notes that this conclusion (i.e., that securities exchanges, members, and issuers of the U.S. Regulated Subsidiaries will continue to be regulated

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into NYSE Euronext Merger Sub, with NYSE Euronext Merger Sub as the surviving company and a wholly-owned subsidiary of ICE Group (the “NYSE Euronext Merger”). NYSE Euronext Merger Sub, as the surviving entity in the NYSE Euronext Merger, will change its name to “NYX Holdings” from and after the closing of the Combination.

in the same manner as they are currently regulated) is based on the structure of the Combination as described in this proposal.

1. ICE Group

Following the Combination, ICE Group will be a for-profit, publicly traded corporation that will act as a holding company for the businesses of NYX Holdings and ICE. ICE Group will hold (i) all of the equity interests in NYX Holdings, which in turn, directly or indirectly holds 100 percent of the equity interests of the U.S. Regulated Subsidiaries, and (ii) all of the equity interests in ICE. 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 ICE Group is not an SRO, certain provisions of its amended and restated Certificate of Incorporation (“ICE Group Certificate”) and amended and restated Bylaws (“ICE Group Bylaws”, and together with the ICE Group Certificate, “the ICE Group Articles”), along with other corporate documents, are rules of an exchange<sup>13</sup> if they are stated policies, practices, or interpretations, as defined in Rule 19b-4 under the Act, of the exchange, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b-4 thereunder. Accordingly, the NYSE Exchanges have filed the proposed ICE Group Articles, along with other corporate documents, with the Commission.

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<sup>13</sup> See Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If ICE Group decides to change the ICE Group Articles, ICE Group must submit such change to the board of directors of the U.S. Regulated Subsidiaries, and if any or all of such board of directors shall determine that such amendment must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. See proposed ICE Group Certificate, Article X; proposed ICE Group Bylaws, Section 11.3.

### Voting and Ownership Limitations

The proposed ICE Group Articles include restrictions on the ability to vote and own shares of stock of ICE Group. Under the proposed ICE Group Certificate (1) no person, either alone or together with its related persons,<sup>14</sup> may be entitled to vote or cause the voting of shares of stock of ICE Group beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter, and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of ICE Group (the “ICE Group Voting Restriction”).<sup>15</sup> The ICE Group Certificate will require ICE Group to disregard any votes purported to be cast in excess of the ICE Group Voting Restriction.

In addition, the ownership restrictions in the ICE Group Certificate would provide that no person, either alone or together with its related persons, may at any time own beneficially shares of ICE Group representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the “ICE Group Ownership Restrictions”).<sup>16</sup> If any person, either alone or together with its related persons, owns shares of ICE Group in excess of the ICE Group Ownership Restriction, then such person and its related persons are obligated to sell promptly, and ICE Group is obligated to purchase promptly, at a price equal to the par value of such shares

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<sup>14</sup> See proposed ICE Group Certificate, Article V, Section A(13).

<sup>15</sup> See proposed ICE Group Certificate, Article V, Section A.

<sup>16</sup> See proposed ICE Group Certificate, Article V, Section B.

and to the extent funds are legally available for such purchase, the number of shares of ICE Group necessary so that such person, together with its related persons, will beneficially own shares of ICE Group representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.<sup>17</sup>

The ICE Group Certificate would provide that the ICE Group Voting Restriction and the ICE Group Ownership Restriction would apply only for so long as ICE Group directly or indirectly controls a U.S. Regulated Subsidiary or a European Market Subsidiary.<sup>18</sup>

The ICE Group board of directors may waive the provisions regarding voting and ownership limits, subject to a determination by the ICE Group board of directors that the exercise of such voting rights (or the entering into of a voting agreement) or ownership, as applicable:

- will not impair the ability of any of the U.S. Regulated Subsidiaries, ICE Group, or NYSE Group to discharge their respective responsibilities under the Act and the rules and regulations thereunder;
- will not impair the ability of any of the European Market Subsidiaries, ICE Group, or Euronext to discharge their respective responsibilities under the European Exchange Regulations;<sup>19</sup>

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<sup>17</sup> See proposed ICE Group Certificate, Article V, Section B.4.

<sup>18</sup> See proposed ICE Group Certificate, Article V, Section A.1. and B.1.

<sup>19</sup> See proposed ICE Group Bylaws, Article III, Section 3.15(b) and (e) for the definitions of “European Exchange Regulations” and “European Market Subsidiary”, respectively.

- is otherwise in the best interest of ICE Group, its shareholders, the U.S. Regulated Subsidiaries and the European Market Subsidiaries; and
- will not impair the Commission’s ability to enforce the Act or the European Regulators’ ability to enforce the European Exchange Regulations.<sup>20</sup>

Such resolution expressly permitting such voting or ownership must be filed with and approved by the Commission under Section 19 of the Act<sup>21</sup> and filed with and approved by each European Regulator having appropriate jurisdiction and authority.

In addition, for so long as ICE Group directly or indirectly controls the Exchange, NYSE Market (DE), Inc., NYSE MKT, NYSE Arca, NYSE Arca Equities Inc. or any facility of NYSE Arca or NYSE MKT, the ICE Group board of directors cannot waive the voting and ownership limits above the 20% threshold for any person if such person or its related persons is a member of NYSE or NYSE MKT, an ETP Holder of NYSE Arca Equities<sup>22</sup>, or an OTP Holder or an OTP Firm of NYSE Arca.<sup>23</sup> Further, the ICE Group board of directors also cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act) (a “U.S. Disqualified Person”) or has been determined by a European Regulator to be in violation of laws or regulations adopted in accordance with the European Directive on Markets in Financial Instruments applicable to any European Market Subsidiary requiring such person to act fairly,

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<sup>20</sup> See proposed ICE Group Certificate, Article V, Section A.11. for the definition of “European Regulator.”

<sup>21</sup> 15 U.S.C. 78s

<sup>22</sup> “ETP Holder” is defined in NYSE Arca Equities Rule 1.1(m). “OTP Holder” and “OTP Firm” are defined, respectively, in NYSE Arca Rule 1.1(q) and 1.1(r).

<sup>23</sup> See proposed ICE Group Certificate, Article V, Section A.3.

honestly and professionally (a “European Disqualified Person”).<sup>24</sup>

Members that trade on an exchange traditionally have had ownership interests in such exchange. As the Commission has noted in the past, however, a member’s interest in an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.<sup>25</sup> A member that is a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and surveil the member’s conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions.<sup>26</sup>

The Commission finds the ownership and voting restrictions in the proposed ICE Group Articles are consistent with the Act. These requirements should minimize the potential that a

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Id.

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See, e.g., Securities Exchange Act Release Nos. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10-198) (order approving registration application of BATS Y-Exchange, Inc. as a national securities exchange); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10-194 and 10-196) (order approving registration applications of EDGX Exchange, Inc. and EDGA Exchange, Inc. as national securities exchanges); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10-182) (order approving registration application of BATS Exchange, Inc. as a national securities exchange); 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120) (order approving proposed combination between NYSE Group, Inc. and Euronext N.V. (“NYSE-Euronext Merger Order”)); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving merger of New York Stock Exchange, Inc. and Archipelago, and demutualization of New York Stock Exchange, Inc.) (“NYSE Inc.-Archipelago Merger Order”)); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR-CHX-2004-26); 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR-PCX-2004-08); 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR-BSE-2003-19).

<sup>26</sup>

See, e.g., id.

person could improperly interfere with or restrict the ability of the Commission, the Exchange, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act.<sup>27</sup>

## 2. NYX Holdings and NYSE Group

Following the Combination, NYX Holdings will be a wholly-owned subsidiary of ICE Group. Furthermore, NYX Holdings will not be a publicly-held company. The NYSE Exchanges have proposed certain changes to reflect that NYX Holdings will become a wholly-owned subsidiary and will not be publicly held. NYX Holdings will act as a holding company for the businesses of the NYSE Group and Euronext. NYX Holdings will own all of the equity interests in NYSE Group and its subsidiaries, including the Exchange, NYSE Arca, and NYSE MKT, and all of the equity interests in Euronext and its respective subsidiaries.<sup>28</sup> Section 19(b)

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<sup>27</sup> See, e.g., NYSE-Euronext Merger Order, 72 FR at 8037.

<sup>28</sup> NYX Holdings, as a Delaware limited liability company, will operate pursuant to an operating agreement (the “NYX Holdings Operating Agreement”). The NYX Holdings Operating Agreement is largely based on the organizational documents of NYSE Euronext, which would cease to be in effect. The NYX Holdings Operating Agreement would modify the current NYSE Euronext’s organizational documents to (1) simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly-owned subsidiary; (2) conform certain provisions to analogous provisions of the organizational documents of NYSE Group, which will likewise be an indirect wholly-owned subsidiary of ICE Group following completion of the Combination; and (3) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions, and to update cross-references to sections). In addition, the current Independence Policy of the NYSE Euronext board of directors would cease to be in effect.

More specifically, the NYX Holdings Operating Agreement would reflect, in part, the following modifications to the NYSE Euronext Certificate and Bylaws: (i) removing the provision for preferred membership interests, (ii) allowing a majority of the membership interests outstanding to call special meetings, take shareholder action by written consent, and to postpone such meetings, (iii) allowing shareholders to fill board vacancies, (iv) deleting provisions requiring a supermajority vote of shareholders to amend or repeal certain sections of the NYX Holdings Operating Agreement, (v) clarifying that notice of shareholder meetings is not required if waived, (vi) deleting the requirement that directors be elected by a majority of the votes cast, (vii) deleting provisions requiring

of the Act and Rule 19b-4 thereunder require a SRO to file proposed rule changes with the Commission. Although NYX Holdings and NYSE Group are not SROs, certain provisions of the proposed NYX Holdings Operating Agreement and NYSE Group's Third Amended and Restated Certificate of Incorporation ("NYSE Group Certificate of Incorporation")<sup>29</sup> are rules of an exchange<sup>30</sup> if they are stated policies, practices, or interpretations, as defined in Rule 19b-4

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advance notice from shareholders of shareholder director nominations or shareholder proposals, (viii) deleting provisions relating to the mechanics of shareholders' meetings, such as the appointment of an inspector of elections, (ix) clarifying that NYX Holdings may not have a Nominating and Governance Committee, (x) deleting the requirement that 75% of the Euronext board must be independent, (xi) providing that the Corporation Trust Company would be the registered office and agent of NYX Holdings in Delaware, (xii) removing certain residency requirements applicable to directors and officers and references to U.S. and European director domiciles, (xiii) deleting that board meetings be held with equal frequency in the United States and Europe, (xiv) removing provisions related to participation requirements when the chairman or deputy chairman of the board of directors is also the chief executive officer or deputy chief executive officer, and (xv) simplifying certain aspects of the indemnification and expense advancement provisions in light of the fact that there are not expected to be any independent, non-executive directors of NYX Holdings.

<sup>29</sup> Generally, the NYSE Exchanges propose, in part, the following changes to NYSE Group's Certificate of Incorporation: (i) clarifying the ability to fix the number of directors and making the board's ability to remove directors subject to the rights of holder of preferred stock; (ii) amending to contemplate successors to NYSE Euronext as the holder of all of the issued and outstanding shares of NYSE Group for purposes of the NYSE Trust Agreement, (iii) clarifying that the voting and ownership concentration limits would be effective "for so long as the Corporation shall control, directly or indirectly" a U.S. Regulated Subsidiary, (iv) amending the definition of "Regulated Subsidiary" in the NYSE Group Bylaws, and (v) making certain clarifications and technical edits.

<sup>30</sup> See Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If NYX Holdings decides to change its Certificate of Incorporation or Bylaws, NYX Holdings must submit such change to the board of directors of the Exchange, NYSE Market, NYSE Regulation, NYSE MKT, NYSE Arca Equities and NYSE Arca, and if any or all of such board of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. See proposed NYX Holdings Operating Agreement, Section 16. If NYSE Group decides to change its Certificate of Incorporation or Bylaws,

under the Act, of the exchange, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b-4 thereunder. Accordingly, the NYSE Exchanges have filed the proposed NYX Holdings Operating Agreement and the proposed NYSE Group Certificate of Incorporation with the Commission.

#### Voting and Ownership Limitations; Changes in Control

The NYSE Exchanges have proposed changing the voting and ownership limitations of NYX Holdings to include a statement that such limitations would not be applicable as long as ICE Group owned all of the issued and outstanding shares of NYX Holdings<sup>31</sup> and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary.<sup>32</sup> Instead, while NYX Holdings is a wholly-owned subsidiary of ICE Group, there shall be no transfer of the shares of NYX Holdings without the approval of the Commission.<sup>33</sup> If NYX Holdings ceases to be wholly-owned by ICE Group, but directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary, the voting and ownership limitations would apply.<sup>34</sup> The voting restrictions contained in the current NYSE

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NYSE Group must submit such change to the board of directors of the Exchange, NYSE Market, NYSE Regulation, NYSE MKT, NYSE Arca Equities and NYSE Arca, and if any or all of such board of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. See proposed NYSE Group Certificate of Incorporation, Article XII.

<sup>31</sup> See proposed NYX Holdings Operating Agreement, Article IX, Section 9.1.

<sup>32</sup> See proposed NYX Holdings Operating Agreement, Article IX, Sections 9.1(a)(voting restrictions) and 9.2(b)(ownership restrictions).

<sup>33</sup> See proposed NYX Holdings Operating Agreement, Article VII, Section 7.2.

<sup>34</sup> The proposed NYX Holdings Operating Agreement would make two additional changes as compared to the current NYSE Euronext Certificate and Bylaws:

Group Certificate of Incorporation are substantially the same as those in the current NYSE Euronext Certificate (except that the current NYSE Group Certificate of Incorporation does not contain any references to European subsidiaries, markets or regulators.) The Exchange proposes to update the NYSE Group Certificate of Incorporation to provide that its voting and ownership restrictions would apply in the event that NYX Holdings and the trust established pursuant to the NYSE Euronext Trust Agreement do not collectively own all of the issued and outstanding shares of stock of NYSE Group and only for so long as NYSE Group directly or indirectly controls any U.S. Regulated Subsidiary.<sup>35</sup>

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First, it would expand the definition of “Related Persons” to provide that (1) in the case of a person that is a “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include the “member” (as defined in Section 3(a)(3)(A)(ii), (iii) or (iv) of the Exchange Act) with which such person is associated; and (2) in the case of any person that is a “member” (as defined in 3(a)(3)(A)(ii), (iii) or (iv) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include any “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such person. See proposed NYX Holdings Operating Agreement, Article I, Section 1.1, xi and xii.

Second, the mandatory repurchase of membership interests from a Person whose ownership represents in the aggregate more than 20% in interest of the interests entitled to vote on any matter would be at a price determined by reference to each incremental percentage ownership over 20% rather than at par value, specifically \$1,000 for each percent. See proposed NYX Holdings Operating Agreement, Article IX, Section 9.1(b)(4).

<sup>35</sup> See proposed NYSE Group Certificate of Incorporation, Article IV, Section 4(b). In addition, the definition of “Related Persons” in the NYSE Group Certificate of Incorporation would be expanded to provide that (1) in the case of a person that is a “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include the “member” (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and (iii) of the Exchange Act, which are currently referenced in this provision of the NYSE Group Certificate) with which such person is associated; and (2) in the case of any person that is a “member” (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and (iii) of the Exchange Act, which are currently referenced in this provision of the NYSE Group Certificate) of NYSE MKT, such person’s “Related Persons” would include any “member” (as defined in Section 3(a)(3)(A)(i) of the

The Commission finds that the changes to the ownership and voting restrictions in the proposed NYX Holdings Operating Agreement and the proposed NYSE Group Certificate of Incorporation, as well as the change in control provisions in the NYSE Euronext Certificate of Incorporation are consistent with the Act. The transfer, ownership and voting restrictions should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission and the U.S. Regulated Subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act.

In addition, to allow ICE Group to wholly-own and vote all of NYSE Euronext stock upon consummation of the Combination, ICE Group delivered a written notice to the board of directors of NYSE Euronext pursuant to the procedures set forth in the current NYSE Euronext Certificate of Incorporation requesting approval of its ownership and voting of NYSE Euronext stock in excess of the NYSE Euronext voting restriction and NYSE Euronext ownership restriction.<sup>36</sup> The board of directors of NYSE Euronext must resolve to expressly permit ownership or voting in excess of the NYSE Euronext voting restriction limitation and NYSE Euronext ownership restriction. Such resolution of the NYSE Euronext board of directors must be filed with and approved by the Commission under Section 19(b) of the Act, and become effective thereunder. Further, the board of directors may not approve any voting or ownership in

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Exchange Act) that is associated with such person. This conforms the definition of Related Person to that in the ICE Group Certificate and the proposed NYX Holdings Operating Agreement. See proposed NYSE Group Certificate of Incorporation, Article IV, Sections 4(b)(1)(E)(vi) and (xii).

<sup>36</sup> Prior to permitting any person to exceed the ownership limitation and voting limitation, such person must deliver notice of such person's intention to own or vote shares in excess of the ownership limitation or voting limitation to the NYSE Euronext board of directors. See current NYSE Euronext Certificate of Incorporation, Article V, Sections 1(C) and 2(C).

excess of the limitations unless it determines that such ownership or exercise of voting rights (i) will not impair the ability of the U.S. Regulated Subsidiaries, NYSE Euronext, and NYSE Group to discharge their respective responsibilities under the Act and the rules and regulations thereunder, (ii) will not impair the ability of any European Market Subsidiary, NYSE Euronext, or Euronext to discharge their respective responsibilities under the European Exchange Regulations, (iii) is otherwise in the best interests of NYSE Euronext, its shareholders, the U.S. Regulated Subsidiaries, and the European Market Subsidiaries, and (iv) will not impair the Commission's ability to enforce the Act or the European Regulators' ability to enforce the European Exchange Regulations.<sup>37</sup> For so long as NYSE Euronext directly or indirectly controls the Exchange or NYSE Market, NYSE Arca, NYSE Arca Equities, any facility of NYSE Arca, or NYSE MKT, the NYSE Euronext board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is a member of the Exchange or NYSE MKT, or an ETP Holder, an OTP Holder or an OTP Firm.<sup>38</sup> Further, the NYSE Euronext board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is a U.S. Disqualified Person or a European Disqualified Person.<sup>39</sup> On June 5, 2013, the board of directors of NYSE Euronext adopted by written consent the NYSE Euronext Resolutions to permit ICE Group, either alone or with its related persons, to exceed the NYSE Euronext ownership restriction and the NYSE Euronext

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<sup>37</sup> See current NYSE Euronext Certificate of Incorporation, Article V, Sections 1(C) and 2(C).

<sup>38</sup> See current NYSE Euronext Certificate of Incorporation, Article V, Sections 1(C) and 2(C).

<sup>39</sup> See current NYSE Euronext Certificate of Incorporation, Article V, Sections 1(C) and 2(C).

voting restriction. In adopting such resolutions, the board of directors of NYSE Euronext made the necessary determinations set forth above and approved the submission of the proposed rule changes to the Commission. Among other things, in this notice, ICE Group represented to the board of directors of NYSE Euronext that neither ICE Group, nor any of its related persons, is (1) an NYSE Member; (2) an NYSE MKT Member; (3) an ETP Holder; (4) an OTP Holder or OTP Firm; or (5) a U.S. Disqualified Person or a European Disqualified Person. The NYSE Euronext board of directors adopted a resolution approving ICE Group's request that it be permitted, either alone or with its related persons, to exceed the NYSE Euronext voting restriction and the NYSE Euronext ownership restriction. The NYSE Euronext board of directors also determined that ownership of NYSE Euronext by ICE Group is in the best interests of NYSE Euronext, its stockholders and the U.S. Regulated Subsidiaries.<sup>40</sup>

The Commission believes it is consistent with the Act to allow ICE Group to wholly-own and vote all of the outstanding common stock of NYSE Euronext. The Commission notes that ICE Group represents that neither ICE Group nor any of its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act), or is a member of the Exchange or NYSE MKT, an ETP Holder, an OTP Holder or an OTP Firm, or a European Disqualified Person. ICE Group has also included in its corporate documents certain provisions designed to maintain the independence of the U.S. Regulated Subsidiaries' self-regulatory

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<sup>40</sup> Such resolution of the NYSE Euronext board of directors was filed as part of the proposed rule changes. See Exhibit D to each of the proposed rule changes, which exhibit is available on the Commission's website (<http://www.sec.gov/rules/sro.shtml>), at the Commission's Public Reference Room, at the NYSE, and on the NYSE's website (<http://www.nyse.com>).

functions from ICE Group, NYX Holdings and NYSE Group.<sup>41</sup> Accordingly, the Commission believes that the acquisition of ownership and exercise of voting rights of NYSE Euronext common stock by ICE Group will not impair the ability of the Commission or any of the U.S. Regulated Subsidiaries to discharge their respective responsibilities under the Act.

3. Proposed Amendments to Board Composition Requirements for the Exchange, NYSE MKT, NYSE Market and NYSE Regulation.

The Fourth Amended and Restated Operating Agreement, dated as of August 23, 2012, of the Exchange (the “Exchange Operating Agreement”), currently provides that (1) a majority of the members of the Exchange’s board of directors must be U.S. persons and members of the board of directors of NYSE Euronext who satisfy the independence requirements of the NYSE Euronext board, and (2) at least 20% of the Exchange’s board members must be persons who are not board members of NYSE Euronext but who qualify as independent under the independence policy of the NYSE Euronext board of directors (the “Non-Affiliated Exchange Directors”).<sup>42</sup> The nominating and governance committee of the NYSE Euronext board of directors is required to designate as Non-Affiliated Exchange Directors the candidates recommended jointly by the Director Candidate Recommendation Committees of each of NYSE Market and NYSE Regulation or, in the event there are Petition Candidates (as such term is defined in the Exchange Operating Agreement), the candidates that emerge from a specified process will be designated as the Non-Affiliated Exchange Directors.<sup>43</sup>

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<sup>41</sup> See infra note 47.

<sup>42</sup> See Exchange Operating Agreement, Section 2.03(a).

<sup>43</sup> See id.

Under the Proposed Rule Change, these provisions would be amended to refer to ICE Group instead of NYSE Euronext. Also, references throughout to the Exchange’s “Corporation Independence Policy” would be changed to “Company Independence Policy” in recognition of the form of organization of the Exchange. Substantially the same revisions would be made to the analogous provisions of the Third Amended and Restated Operating Agreement of NYSE MKT.

In addition, references to NYSE Euronext in the Director Independence Policy of each of the Exchange, NYSE Market, NYSE Regulation, NYSE Arca and NYSE MKT would be revised to refer to ICE Group.<sup>44</sup>

The Commission finds that these proposals are consistent with the Act, particularly Section 6(b)(1),<sup>45</sup> 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

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<sup>44</sup> Generally, the NYSE Exchanges propose, in part, the following changes to the constituent documents of the Exchange, NYSE MKT, NYSE Market and NYSE Regulation: (i) replacing NYSE Euronext with ICE Group as appropriate, (ii) updating the address of the registered office and agent for NYSE Market, and (ii) correcting certain typographical errors and making certain technical changes.

The NYSE Exchanges propose, in part, the following changes to the Exchange Rules, NYSE MKT Rules and NYSE Arca Equities Rules: (i) replacing NYSE Euronext with ICE Group or NYX Holdings, as appropriate, (ii) revising the Exchange Rules to delete the definitions of “member” and “member organization” relating to NYSE MKT due to the incorporation of such provisions into the proposed ICE Group Certificate, and (iii) eliminating certain provisions in NYSE MKT Rule 104T relating to restrictions on transfer in the NYSE Euronext Certificate because the referenced restrictions are no longer in effect and there will be no analogous provision in the ICE Group Certificate.

<sup>45</sup> 15 U.S.C. 78f(b)(1).

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.<sup>46</sup>

B. Relationship of ICE Group, NYX Holdings, NYSE Group, and the U.S. Regulated Subsidiaries; Jurisdiction over ICE Group

Although ICE Group itself will not carry out regulatory functions, its activities with respect to the operation of any of the U.S. Regulated Subsidiaries must be consistent with, and not interfere with, the U.S. Regulated Subsidiaries' self-regulatory obligations. The proposed ICE Group corporate documents include certain provisions that are designed to maintain the independence of the U.S. Regulated Subsidiaries' self-regulatory functions from ICE Group, NYX Holdings, and NYSE Group, enable the U.S. Regulated Subsidiaries to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,<sup>47</sup> and facilitate the ability of the U.S. Regulated Subsidiaries and the Commission to fulfill their regulatory and oversight obligations under the Act.<sup>48</sup>

For example, under the proposed ICE Group Bylaws, ICE Group shall comply with the U.S. federal securities laws, the European Exchange Regulations, and the respective rules and regulations thereunder; shall cooperate with the Commission, the European Regulators, and the U.S. Regulated Subsidiaries.<sup>49</sup> Also, each director, officer, and employee of ICE Group, to the extent in discharging his or her responsibilities shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with the

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<sup>46</sup> 15 U.S.C. 78f(b)(3).

<sup>47</sup> 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

<sup>48</sup> See proposed ICE Group Bylaws Article IX.

<sup>49</sup> See proposed ICE Group Bylaws, Article IX, Section 9.1 and 9.2.

U.S. Regulated Subsidiaries.<sup>50</sup> In addition, in discharging his or her responsibilities as a member of the board, each director of ICE Group must, to the fullest extent permitted by applicable law, take into consideration the effect that ICE Group's actions would have on the ability of the U.S. Regulated Subsidiaries to carry out their responsibilities under the Act, on the ability of the European Market Subsidiaries to carry out their responsibilities under the European Exchange Regulations as operators of European Regulated Markets, and on the ability of the U.S. Regulated Subsidiaries, NYSE Group, and ICE Group (i) to engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, NYX Holdings and ICE Group to prevent fraudulent and manipulative acts and practices in the securities markets; (ii) to promote just and equitable principles of trade in the securities markets; (iii) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (iv) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (v) in general, to protect investors and the public interest.<sup>51</sup> For so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, ICE Group, its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries (to the extent of each U.S. Regulated Subsidiary's self-regulatory function) and the European Market Subsidiaries (to the extent of each European Market Subsidiaries' self-regulatory function).<sup>52</sup> Further, ICE Group agrees to keep confidential all confidential

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<sup>50</sup> See proposed ICE Group Bylaws, Article III, Section 3.14(b).

<sup>51</sup> See proposed ICE Group Bylaws, Article III, Section 3.14(a).

<sup>52</sup> See proposed ICE Group Bylaws, Article IX, Section 9.4 and 9.5.

information pertaining to: (1) the self-regulatory function of the any U.S. Regulated Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of any of the U.S. Regulated Subsidiaries; and (2) the self-regulatory function of the European Market Subsidiaries under the European Exchange Regulations as operator of a European Regulated Market (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the European Market Subsidiaries, and not use such information for any commercial<sup>53</sup> purposes.<sup>54</sup>

In addition, ICE Group's books and records shall be subject at all times to inspection and copying by the Commission, the European Regulators, any U.S. Regulated Subsidiary (provided that such books and records are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight) and any European Market Subsidiary (provided that such books and records are related to the operation or administration of such European Market Subsidiary or any European Regulated Market over which such European Market Subsidiary has regulatory authority or oversight).<sup>55</sup> The ICE Group Bylaws would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations

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<sup>53</sup> The Commission believes that any non-regulatory use of such information would be for a commercial purpose. See, e.g., NYSE-Euronext Merger Order, supra note 25, 72 FR at 8041 n. 71.

<sup>54</sup> See proposed ICE Group Bylaws, Article VIII, Section 8.1.

<sup>55</sup> See proposed ICE Group Bylaws, Article VIII, Section 8.3.

thereunder; or (ii) the ability of any officers, directors, employees or agents of ICE Group to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.<sup>56</sup> ICE Group's books and records related to U.S. Regulated Subsidiaries shall be maintained within the United States, and ICE Group's books and records related to European Market Subsidiaries shall be maintained in the home jurisdiction of one or more of the European Market Subsidiaries or of any subsidiary of ICE Group in Europe.<sup>57</sup> The ICE Group Bylaws also provide that if and to the extent that any of ICE Group's books and records may relate to both European Market Subsidiaries and U.S. Regulated Subsidiaries (each such book and record an "Overlapping Record"), ICE Group shall be entitled to maintain such books and records either in the home jurisdiction of one or more European Market Subsidiaries or in the United States.<sup>58</sup>

In addition, for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the books, records, premises, officers, directors, and employees of ICE Group shall be deemed to be the books, records, premises, officers, directors, and employees of the U.S. Regulated Subsidiaries for purposes of and subject to oversight pursuant to the Act, and for so long as ICE Group directly or indirectly controls any European Market Subsidiary, the books, records, premises, officers, directors, and employees of ICE Group shall be deemed to be the books, records, premises, officers, directors, and employees of such European Market Subsidiaries for purposes of and subject to oversight pursuant to the European Exchange Regulations.<sup>59</sup>

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<sup>56</sup> See proposed ICE Group Bylaws, Article VIII, Section 8.2.

<sup>57</sup> See proposed ICE Group Bylaws, Article VIII, Sections 8.4 and 8.5.

<sup>58</sup> See proposed ICE Group Bylaws, Article VIII, Section 8.6.

<sup>59</sup> See proposed ICE Group Bylaws, Article VIII, Sections 8.4 and 8.5.

ICE Group and its directors and, to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, ICE Group's officers and employees whose principal place of business and residence is outside of the United States irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission with respect to activities relating to the U.S. Regulated Subsidiaries, and to the jurisdiction of the European Regulators and European courts with respect to activities relating to the European Market Subsidiaries.<sup>60</sup>

The ICE Group Bylaws would provide that ICE Group will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of ICE Group to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.<sup>61</sup>

Further, ICE Group acknowledges that it is responsible for referring possible rule violations to the NYSE Exchanges. In addition, ICE Group will enter into an agreement with NYSE Regulation acknowledging that each of the Exchange, NYSE MKT and NYSE Arca has contracted to have NYSE Regulation perform its self-regulatory obligations, in each case with the self-regulatory organization retaining its responsibility for the adequate performance of those regulatory obligations, and agreeing to provide adequate funding to NYSE Regulation.<sup>62</sup>

Finally, the proposed ICE Group Articles require that, for so long as ICE Group controls, directly or indirectly, any of the U.S. Regulated Subsidiaries, any changes to the proposed ICE Group Articles be submitted to the board of directors of such U.S. Regulated Subsidiaries, and if

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<sup>60</sup> See proposed ICE Group Bylaws, Article VII, Sections 7.1 and 7.2.

<sup>61</sup> See proposed ICE Group Bylaws, Article IX, Section 9.3.

<sup>62</sup> See, e.g., Notice at 39412.

any such boards of directors determines that such amendment is required to be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act<sup>63</sup> and the rules thereunder, such change shall not be effective until filed with or filed with and approved by, the Commission.<sup>64</sup>

The Commission finds that these provisions are consistent with the Act, and that they are intended to assist the NYSE Exchanges in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act. With respect to the maintenance of books and records of ICE Group, the Commission notes that while ICE Group has the discretion to maintain Overlapping Records in either the United States or the home jurisdiction of one or more of the European Market Subsidiaries, ICE Group is liable for any books and records it is required to produce for inspection and copying by the Commission that are created outside the United States and where the law of a foreign jurisdiction prohibits ICE Group from providing such books and records to the Commission for inspection and copying.<sup>65</sup> Moreover, the Commission notes that NYSE Euronext is under an existing obligation to make its books and records available in compliance with the requirements of Rule 17a-1(b).<sup>66</sup> The Commission notes that the obligations of NYSE Euronext established in the prior orders remains in effect for its successors entity, i.e., NYX Holdings.<sup>67</sup> The Commission also notes that the NYSE

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<sup>63</sup> 15 U.S.C. 78s.

<sup>64</sup> See proposed ICE Group Bylaws, Article XI, Section 11.3; proposed ICE Group Certificate, Article X(C).

<sup>65</sup> See Securities Exchange Act Release Nos. 55293 (February 14, 2007), 72 FR 8033, 8041 (February 22, 2007) (SR-NYSE-2006-120).

<sup>66</sup> Id.

<sup>67</sup> NYSE Euronext is currently required to maintain in the United States originals or copies of books and records that relate to both the U.S. Regulated Subsidiaries and its European

Euronext Trust Agreement (“Trust Agreement”)<sup>68</sup> established under a prior order also remains in effect unchanged, other than revising the reference in the Trust Agreement from the nominating and governance committee of NYSE Euronext to the nominating and governance committee of ICE Group.<sup>69</sup>

Under Section 20(a) of the Act,<sup>70</sup> any person with a controlling interest in the U.S. Regulated Subsidiaries shall be jointly and severally liable with and to the same extent that the U.S. Regulated Subsidiaries are liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act<sup>71</sup> creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act<sup>72</sup> authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to ICE

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market subsidiaries covered by Rule 17a-1(b) promptly after creation of such books and records. See supra, note 65, 72 FR 8041, 8042.

<sup>68</sup> The NYSE Trust was created, in part, to take actions to mitigate the effects of any material adverse change in European law that has an “extraterritorial” impact on the non-European issuers listed on NYSE Group securities exchanges, non-European financial services firms that are members of any NYSE Group securities exchange, or any NYSE Group securities exchange. See supra, note 65, 72 FR at 8042.

<sup>69</sup> Section 4(a) of Article IV of the NYSE Group Certificate also would be amended to contemplate successors to NYSE Euronext as the holder of all of the issued and outstanding shares of NYSE Group for purposes of the Trust Agreement.

<sup>70</sup> 15 U.S.C. 78t(a).

<sup>71</sup> 15 U.S.C. 78t(e).

<sup>72</sup> 15 U.S.C. 78u-3.

Group's dealings with the U.S. Regulated Subsidiaries.

C. ICE Group Director Independence Policy

Under the Proposed Rule Change, ICE Group will adopt a Director Independence Policy that would be substantially identical to the current Independence Policy of the NYSE Euronext board of directors except for the change of the entity whose board of directors adopted the policy and nonsubstantive conforming changes.

The Commission finds that the proposed Director Independence Policy is consistent with the Act, particularly Section 6(b)(1),<sup>73</sup> which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act. The Commission notes that a majority of ICE Group's Board would need to be independent. In addition, the Commission notes that as a company listed on the Exchange, ICE Group'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 ICE Group's 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.

D. Options Trading Rights

The Commission received one comment letter<sup>74</sup> on the proposed rule changes regarding certain Option Trading Rights ("OTRs") that were separated from full New York Stock

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<sup>73</sup> 15 U.S.C. 78f(b)(1).

<sup>74</sup> See Rothlein Letter, supra note 5.

Exchange, Inc.<sup>75</sup> seats (“Separated OTRs”). All New York Stock Exchange seat ownership (with or without OTRs) was extinguished in the 2006 demutualization of New York Stock Exchange, Inc.<sup>76</sup> Although the commenter takes no position on the merits of the Combination, the commenter opposes the Combination on the grounds that the Exchange does not fully own all of the assets being transferred. Specifically, the commenter contends that the owners of Separated OTRs retained their Separated OTRs, even after the New York Stock Exchange, Inc. exited the options business in 1997, with the expectation that their ownership of the Separated OTRs would afford them full rights to trade options under the auspices of New York Stock Exchange, Inc. or its successor entity. The commenter asked that the Commission withhold approval of the Combination until the matter of Separated OTRs is resolved.<sup>77</sup> The NYSE Response to Comments states that the issue of the rights of owners of Separated OTRs is not before the Commission in the context of the proposed rule filing by the Exchange and notes that the Exchange is not proposing in its filing a change in the trading rights on the Exchange.<sup>78</sup>

The issue of the rights of owners of Separated OTRs is not before the Commission in the context of this rule filing. Pursuant to Section 19(b)(1) of the Act,<sup>79</sup> an SRO (such as NYSE) is required to file with the Commission any proposed rule or any proposed change in, addition to,

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<sup>75</sup> New York Stock Exchange, Inc. is the predecessor entity to NYSE. See NYSE Inc.-Archipelago Merger Order, supra note 25.

<sup>76</sup> See NYSE Inc.-Archipelago Merger Order, supra note 25.

<sup>77</sup> The Commission notes that the commenter continued to argue, in part, in its rebuttal to the NYSE Response to Comments that the Commission should withhold approval of the Combination until the matter of Separated OTRs are resolved. See Rothlein Rebuttal Letter, supra note 6.

<sup>78</sup> See NYSE Response to Comments, supra note 6.

<sup>79</sup> 15 U.S.C. 78s(b)(1).

or deletion from the rules of such SRO. Further, pursuant to Section 19(b)(2) of the Act,<sup>80</sup> the Commission shall approve a proposed rule change filed by an SRO if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO.

### III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is 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 Act<sup>81</sup> that the proposed rule changes (SR-NYSE-2013-42; SR-NYSEMKT-2013-50; SR-NYSEArca-2013-62), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>82</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>80</sup> 15 U.S.C. 78s(b)(2).

<sup>81</sup> Id.

<sup>82</sup> 17 CFR 200.30-3(a)(12).