

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78663; File No. SR-NYSEMKT-2016-80)

August 24, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending and Restating the Second Amended and Restated Certificate of Incorporation of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc.

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 August 17, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") 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 and restate the Second Amended and Restated Certificate of Incorporation (the "ICE Certificate") of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. ("ICE"), to increase ICE's authorized share capital, and to make other, non-substantive changes. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 proposed amendments would revise the ICE Certificate⁴ to increase the total number of authorized shares of ICE common stock, par value \$0.01 per share (“Common Stock”), and make other, non-substantive changes. More specifically, the Exchange proposes to make the following amendments to the ICE Certificate:

- In Article IV, Section A, the total number of shares of stock that ICE is authorized to issue would be changed from 600,000,000 to 1,600,000,000 shares, and the portion of that total constituting Common Stock would be changed from 500,000,000 to 1,500,000,000 shares.

⁴ ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc., which in turn owns 100% of the equity interest in NYSE Holdings LLC. NYSE Holdings LLC owns 100% of the equity interest of NYSE Group, Inc., which in turn directly owns 100% of the equity interest of the Exchange and its affiliates New York Stock Exchange LLC and NYSE Arca, Inc. ICE is a publicly traded company listed on the Exchange’s affiliate New York Stock Exchange LLC. The Exchange’s affiliates, New York Stock Exchange LLC and NYSE Arca, Inc., have each submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2016-57 and SR-NYSEArca-2016-119.

- In Article V, Section A.5, the reference to “this Section A of ARTICLE VI” would be corrected to refer to “this Section A of ARTICLE V”.
- References to the “Second Amended and Restated Certificate of Incorporation” would be changed throughout to refer to the “Third Amended and Restated Certificate of Incorporation”, and related technical and conforming changes would be made to the recitals and signature page of the ICE Certificate.

The proposed amendments to the ICE Certificate were approved by the board of directors of ICE (“ICE Board”) on August 1, 2016. The Exchange proposes that the above amendments to the ICE Certificate would be effective when filed with the Department of State of Delaware, which would not occur until approval of the amendments by the stockholders of ICE is obtained at a Special Meeting of Stockholders on October 12, 2016.

The trading price of ICE’s Common Stock has risen significantly since ICE’s initial public offering in 2005,⁵ and the ICE Board believes that such price appreciation may impact the liquidity of ICE’s Common Stock, making it more difficult to efficiently trade and potentially less attractive to certain investors. Accordingly, the ICE Board approved pursuing a 5-for-1 stock split by way of a stock dividend, pursuant to which the holders of record of shares of Common Stock would receive, by way of a dividend, four shares of Common Stock for each share of Common Stock held by such holder (the “Stock Dividend”). The ICE Board’s approval of the Stock Dividend was contingent upon Commission and ICE stockholder approval of the proposed amendments to the ICE Certificate.

⁵ The closing price of ICE’s Common Stock on July 29, 2016, the trading date prior to the ICE Board vote to approve the proposal, was \$264.20. The price of ICE’s Common Stock at its initial public offering on November 16, 2005, was \$26.00.

The number of shares of Common Stock proposed to be issued in the Stock Dividend exceeds ICE's authorized but unissued shares of Common Stock. The proposed rule change would increase ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend.

The proposed changes would not alter the limitations on voting and ownership set forth in Section V of the ICE Certificate. Such limitations were introduced at the time of ICE's acquisition of the Exchange, to "minimize the potential that a 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."⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,⁷ in general, and Section 6(b)(1) of the Exchange Act,⁸ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposal to increase ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend would not impact the Exchange's ability to be so organized as to have the capacity to be able to carry out the purposes of the

⁶ See Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR-NYSE-2013-42; SR-NYSEMKT-2013-50; and SR-NYSEArca-2013-62), at 51760. ICE was previously named IntercontinentalExchange Group, Inc. See Securities Exchange Act Release No. 72156 (May 13, 2014), 79 FR 28782 (May 19, 2014) (SR-NYSEMKT-2014-41).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Section V of the ICE Certificate, and so the proposed changes would not enable a person to “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.”⁹

For similar reasons, the proposal is consistent with Section 6(b)(5) of the Exchange Act,¹⁰ because it would not impact the Exchange’s governance or regulatory structure, which would continue to 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 regulating, clearing, settling, processing information with respect to, and 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 approval of the proposal would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because by increasing ICE’s authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend, the proposed rule change will facilitate broader ownership of ICE.

The Exchange believes that amending Article V, Section A.5, to correct the reference to “this Section A of ARTICLE VI” to refer to “this Section A of ARTICLE V” would reduce potential confusion that may result from having an incorrect reference in the ICE Certificate.

⁹ See Securities Exchange Act Release No. 70210, supra note 6, at 51760.

¹⁰ 15 U.S.C. 78f(b)(5).

Replacing such incorrect reference would further the goal of transparency and add clarity to the ICE Certificate.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with the number of authorized shares of Common Stock and shares of capital stock of the Exchange's ultimate parent.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2016-80 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEMKT-2016-80. 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-NYSEMKT-2016-80, 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.¹¹

Robert W. Errett
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).