

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79675; File No. SR-NYSEMKT-2016-122)

December 22, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change in Connection with the Proposed Acquisition of National Stock Exchange, Inc. by the NYSE Group, 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 December 16, 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 in connection with the proposed acquisition of National Stock Exchange, Inc. (“NSX”) by the Exchange’s parent the NYSE Group, Inc. (“NYSE Group”), to amend certain organizational documents of NYSE Group, NYSE Holdings LLC (“NYSE Holdings”), Intercontinental Exchange Holdings, Inc. (“ICE Holdings”), and Intercontinental Exchange, Inc. (“ICE”). 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On December 14, 2016, ICE entered into an agreement with the NSX pursuant to which its wholly-owned subsidiary NYSE Group would acquire all of the outstanding capital stock of the NSX (the “Acquisition”). As a result of the Acquisition, the NSX would be renamed NYSE National, Inc. (“NYSE National”) and would be operated as a wholly-owned subsidiary of NYSE Group. NYSE Group is a wholly-owned subsidiary of NYSE Holdings, which is in turn 100% owned by ICE Holdings. ICE, a public company listed on the New York Stock Exchange LLC (the “NYSE”), owns 100% of ICE Holdings.

Following the Acquisition, NYSE National would continue to be registered as a national securities exchange and as a separate self-regulatory organization (“SRO”). As such, NYSE National would continue to have separate rules, membership rosters, and listings that would be distinct from the rules, membership rosters, and listings of the three other registered national

securities exchanges and SROs owned by NYSE Group, namely, the Exchange, the NYSE, and NYSE Arca, Inc. (“NYSE Arca”) (together, the “NYSE Exchanges”).⁴

In connection with the Acquisition and as discussed more fully below, the following organizational documents of NYSE Group and its intermediary and ultimate parent entities would be amended:

- ICE bylaws and director independence policy,
- ICE Holdings bylaws and certificate of incorporation,
- NYSE Holdings operating agreement, and
- NYSE Group bylaws and certificate of incorporation.

These proposed changes would consist of technical and conforming amendments to reflect the proposed new ownership of NYSE National by the NYSE Group, and, indirectly, ICE.⁵

The proposed rule changes would be effected following approval of this rule filing no later than February 28, 2017, on a date determined by its Board.

Proposed Rule Change

The Exchange proposes that, in connection with the Acquisition, the Commission approve the organizational documents of ICE and its wholly-owned subsidiaries ICE Holdings and NYSE Group and the Independence Policy of the Board of Directors of Intercontinental Exchange, Inc. (“ICE Independence Policy”), all of which are to be amended concurrently with the Acquisition to reflect ownership of NYSE National.

⁴ The NYSE Exchanges are referred to as the U.S. Regulated Subsidiaries in the corporate documents proposed to be amended in this rule filing.

⁵ The proposed revisions are also discussed in the NYSE and NYSE Arca companion rule filings related to the Acquisition. See SR-NYSE-2016-90 & SR-NYSEArca-2016-167.

The current organizational documents of ICE and its wholly-owned subsidiaries provide certain protections to the NYSE Exchanges that are designed to protect and facilitate their self-regulatory functions, including certain restrictions on the ability to vote and own shares of ICE.⁶ In general, the organizational documents of ICE and its wholly-owned subsidiaries are being amended to provide similar protections to the NYSE National as are currently provided to the NYSE Exchanges under those documents.

In addition, obsolete references to NYSE Market (DE), Inc. (formerly NYSE Market, Inc.) (“NYSE Market (DE)”), and NYSE Regulation, Inc. (“NYSE Regulation”) found in various documents are proposed to be deleted.⁷

Proposed Seventh Amended and Restated Bylaws of Intercontinental Exchange, Inc.
(“ICE Bylaws”)

The ICE Bylaws would be amended to reflect the Acquisition and incorporate NYSE National in the ICE Bylaws’ existing voting and ownership restrictions, provisions relating to the qualifications of directors and officers and their submission to jurisdiction, compliance with the federal securities laws, access to books and records, and other matters related to its control of the U.S. Regulated Subsidiaries.

Specifically, the ICE Bylaws would be amended as follows:

⁶ See Securities Exchange Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (approving rule changes related to NYSE Euronext becoming a wholly owned subsidiary of ICE (then called IntercontinentalExchange Group, Inc.)).

⁷ NYSE Market (DE) and NYSE Regulation were previously parties to a Delegation Agreement whereby the NYSE delegated certain regulatory functions to NYSE Regulation and certain market functions to NYSE Market (DE). The Delegation Agreement was terminated when the NYSE re-integrated its regulatory and market functions. As a result, the two entities ceased being regulated subsidiaries. See Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015). NYSE Regulation has since been merged out of existence.

- The definition of “U.S. Regulated Subsidiaries” in Article III, Section 3.15, which currently includes the NYSE, NYSE Market (DE), NYSE Regulation, NYSE Arca, LLC, NYSE Arca, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), and NYSE MKT, would be amended to include NYSE National. The obsolete references to NYSE Market (DE) and NYSE Regulation would also be deleted.
- Article VIII (Confidential Information), Section 8.1, would be amended to extend to NYSE National the same protection regarding confidential information provided to the NYSE Exchanges and NYSE Arca Equities, and to remove the obsolete references to NYSE Market (DE) and NYSE Regulation.
- Article XI, Section 11.3, provides that, for so long as ICE controls any of the U.S. Regulated Subsidiaries, any amendment to or repeal of the ICE Bylaws must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder, or (ii) submitted to the boards of directors of the U.S. Regulated Subsidiaries or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by ICE. Section 11.3 would be amended to include the NYSE National, and to delete the obsolete references to NYSE Market (DE) and NYSE Regulation.

The ICE Bylaws would be further amended to add a new Article XII (Voting and Ownership Limitations). New Section 12.1.a of Article XII would provide that, subject to its

fiduciary obligations under applicable law, for so long as ICE directly or indirectly controls NYSE National (or its successor), the board of directors of ICE shall not adopt any resolution pursuant to clause (b) of Section A.2 of Article V of the certificate of incorporation of ICE (which relates to ICE board of directors approval of ownership of ICE capital stock by a person together with its related persons in excess of 20%), unless the board of directors of ICE shall have determined that:

- in the case of a resolution to approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter, neither such person nor any of its related persons is an ETP Holder of NYSE National;
- in the case of a resolution to approve the entering into of an agreement, plan or other arrangement under circumstances that would result in shares of stock of ICE that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any person, but for Article V of the Certificate of Incorporation of ICE, either alone or together with its related persons, to vote, possess the right to vote or cause the voting of shares of stock of ICE that would exceed 20% of the then outstanding votes entitled to be cast on such matter neither such person nor any of its related persons is, with respect to NYSE National, an ETP Holder.

New Section 12.1.b would provide that, subject to its fiduciary obligations under applicable law, for so long as ICE directly or indirectly controls NYSE National (or its

successor), the Board of Directors of ICE shall not adopt any resolution pursuant to clause (b) of Section B(2) of Article V of ICE’s Certificate of Incorporation, unless the Board of Directors shall have determined that neither such person nor any of its related persons is an ETP Holder.

New Section 12.2 would provide that, for so long as ICE shall control, directly or indirectly, NYSE National (or its successor), the ICE board of directors shall not adopt any resolution to repeal or amend any provision of the certificate of incorporation of ICE unless such amendment or repeal shall either be (a) filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder or (b) submitted to the board of directors of NYSE National (or the board of directors of its successor), and if such board of directors determines that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be.

Proposed Eighth Amended and Restated Certificate of Incorporation of Intercontinental Exchange Holdings, Inc. (“ICE Holdings Certificate of Incorporation”)

The ICE Holdings Certificate of Incorporation is being amended as follows:

- On the first page, add “Eighth” and delete “Seventh” before “Amended and Restated Certificate of Incorporation” in the heading and update items (2) – (5) accordingly to reflect that this would be the eighth amendment and restatement including replacing an incorrect reference to “Sixth” before “Amended” in item (3). The date would also be updated in the preamble on the first page.

- To distinguish between the ETP Holders of NYSE Arca Equities and those of NYSE National, subsection A.3.c.ii of Article V (Limitations on Voting and Ownership) would be amended to define an ETP Holder of NYSE Arca Equities as an “NYSE Arca Equities ETP Holder.” Obsolete references to NYSE Market (DE) and NYSE Regulation, would also be deleted.⁸

Subsection A.3.c of Article V would be amended to add a new subsection (v), similar to those in place for the other NYSE Exchanges, which would provide that for so long as the ICE Holdings directly or indirectly controls NYSE National (or its successor), no person nor any of its related persons (as those terms are defined therein) is an ETP Holder (as proposed to be defined in the bylaws of NYSE National, discussed above) of NYSE National.

- Subsection A.3.d of Article V would be amended to add “NYSE Arca” before “ETP Holder” in one place to distinguish between the NYSE Arca Equities ETP Holders of and those of NYSE National.

Subsection (A)(3)(d) would be further amended to add a new subsection (v) similar to those in place for the other NYSE Exchanges. The new subsection would incorporate NYSE National into the existing restriction, such that the ICE Holdings Board of Directors would be restricted from adopting a resolution to approve the exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast on such

⁸ See note 7, supra.

matter, where neither such person nor any of its related persons is, with respect to NYSE National, an NYSE National ETP Holder.

- Subsection B.3 of Article V would be amended to add a new subsection (g) similar to those in place for the other NYSE Exchanges, incorporating NYSE National into the restriction on the ICE Holdings board of directors adopting any resolution pursuant to clause (b) of Section B.2 of Article V of the ICE Holdings Certificate of Incorporation (which relates to ICE board of directors approval of ownership of ICE capital stock by a person together with its related persons in excess of 20%) unless the NYSE Holdings board of directors determines that, for so long as ICE Holdings controls NYSE National, neither such person nor any of its related persons is an NYSE National ETP Holder.

Proposed Fifth Amended and Restated Bylaws of Intercontinental Exchange Holdings, Inc. (“ICE Holdings Bylaws”)

The ICE Holdings Bylaws are being amended as follows:

- The cover page and heading on the first page would be amended to add “Fifth” and delete “Fourth” before “Amended and Restated Bylaws” to reflect that this would be the fifth amendment and restatement. The effective date on the cover page would also be updated.
- Similar to the ICE Bylaws discussed above, the ICE Holdings Bylaws would be amended to include “NYSE National, Inc.” in:
 - The definition of “U.S. Regulated Subsidiaries” in Article III, Section 3.15, which currently includes the NYSE, NYSE Market

(DE), NYSE Regulation, NYSE Arca, LLC, NYSE Arca, NYSE Arca Equities, and the Exchange, and to provide that the term “U.S. Regulated Subsidiaries” includes those entities listed or their successors, but only so long as they continue to be controlled, directly or indirectly, by ICE Holdings. Obsolete references to NYSE Market (DE) and NYSE Regulation in that section would also be deleted;⁹

- Article VIII (Confidential Information), Section 8.1, which would be amended to extend the same protection to confidential information relating to the self-regulatory function of NYSE National or its successor;¹⁰ and
- Article XI (Amendment to the Bylaws), Section 11.3, which provides that, for so long as ICE controls any of the U.S. Regulated Subsidiaries, any amendment to or repeal of the ICE Bylaws must either be (i) filed with or filed with and approved by the Commission under section 19 of the Exchange Act and the rules promulgated thereunder, or (ii) submitted to the boards of directors of the U.S. Regulated Subsidiaries or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by ICE

⁹ See note 7, supra.

¹⁰ Article VIII, Section 8.1 would also be amended to delete obsolete references to NYSE Market (DE) and NYSE Regulation.

Holdings. Obsolete references to NYSE Market (DE) and NYSE Regulation would also be deleted from Article VXI, Section 11.3.¹¹

Proposed Independence Policy of the Board of Directors of Intercontinental Exchange, Inc. (“ICE Director Independence Policy”)

The ICE Director Independence Policy would be amended to add NYSE National to the section describing “Independence Qualifications.” In particular, NYSE National would be added to categories (1)(b) and (c) that refer to “members,” as defined in section 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act.¹² The clause “and ‘Person Associated with an ETP Holder’ (as defined in Rule 1.5 of NYSE National, Inc.)” would also be added to category (1)(b) in reference to “allied persons.” NYSE National would also be added to subsections (4) and (5) of the “Independence Qualifications” section.¹³ Obsolete references to NYSE Market (DE) and NYSE Regulation would also be deleted.¹⁴

Proposed Eighth Amended and Restated Limited Liability Company Agreement of NYSE Holdings LLC (“NYSE Holdings LLC Operating Agreement”)

The NYSE Holdings LLC Operating Agreement would be amended as follows:

- The heading and preamble would be amended to add “Eighth” and delete “Seventh” before “Amended and Restated Limited Liability Agreement” to reflect that this would be the eighth amendment and restatement. The effective date would also be updated. After “This Agreement amends and

¹¹ See note 7, *supra*. Conforming changes to delete and replace connectors would also be made throughout.

¹² See 15 U.S.C. 78c(a)(3)(a).

¹³ Conforming changes would also be made to delete and replace connectors. The link in footnote 2 to the NYSE Listed Company Manual and commentary would also be updated.

¹⁴ See note 7, *supra*.

restates in its entirety that” in the second full sentence would be added the clause “certain Seventh Amended and Restated Limited Liability Company Agreement, dated as of May 22, 2015, which amended and restated in its entirety that.”

- The current penultimate whereas clause would be amended by adding “in May 2015” before “the Company” and “now desires to amend and restate” immediately following would be replaced with “amended and restated.” “Had” and “are” would be changed to the past tense “had” [sic] and “were” in the final sentence.
- The following new whereas clause would be added immediately above the current last whereas clause: “WHEREAS, the Company now desires to amend and restate the Seventh Amended and Restated Agreement to reflect the acquisition of NYSE National, Inc. by the Company’s wholly-owned subsidiary NYSE Group, Inc.;”.
- The definition of ETP Holder in Article I (Interpretation), Section 1.1 would be deleted and new definitions of an NYSE Arca ETP Holder and NYSE National ETP Holder would be added. The obsolete definition of NYSE Market (DE) would be deleted.¹⁵
- Article IX (Voting and Ownership Limitations), Section 9.1(a)(3)(C) would be amended to add “NYSE Arca” before “ETP Holder” and the defined term “NYSE Arca ETP Holder” to distinguish between the ETP Holders of NYSE Arca Equities and those of NYSE National. An

¹⁵ See note 7, supra.

obsolete reference to NYSE Market (DE) would also be deleted from Section 9.1(a)(3)(C).¹⁶

Section 9.1(a)(3)(C) would be amended to add a new subsection (v) similar to those in place for the other NYSE Exchanges. The new subsection (v) would incorporate NYSE National into the existing restriction, such that the ICE Holdings board of directors would be restricted from adopting a resolution pursuant to clause (b) of Section 9.1(a)(2) unless the NYSE Holdings board of directors determines that, for so long as NYSE Holdings directly or indirectly controls NYSE National, Inc. (or its successor), neither such person nor any of its related persons is an ETP Holder (as defined in the bylaws of NYSE National, as such bylaws may be in effect from time to time) of NYSE National (“NYSE National ETP Holder”). The clause would also provide that any such person that is a related person of an ETP Holder shall hereinafter also be deemed to be an “NYSE National ETP Holder” for purposes of the agreement, as the context may require.

- Article IX, Section 9.1(a)(3)(D) would be amended to add “NYSE Arca” before “ETP Holder.” An outdated reference to NYSE Market (DE) would also be deleted.

Further, a new clause (v) would be added to Section 9.1(a)(3)(D) to incorporate NYSE National into the existing restriction on the NYSE Holdings Board of Directors, such that it would be restricted from

¹⁶ See note 7, *supra*. Conforming changes to delete and replace connectors would also be made throughout.

adopting a resolution to approve the exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast on such matter for so long as NYSE Holdings controls NYSE National. The clause would provide that “for so long as the Corporation directly or indirectly controls NYSE National, neither such person nor any of its Related Persons is an NYSE National ETP Holder.”

- Article IX, Section 9.1(b)(3) of Article IX [sic] would be amended to add a new subpart (G) to incorporate NYSE National into the existing restriction on the NYSE Holdings Board of Directors, so that it would provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Holdings directly or indirectly controls NYSE National (or its successor), the board of directors of NYSE Holdings shall not adopt any resolution pursuant to (b) of **Error! Reference source not found.****Error! Reference source not found.**(**Error! Reference source not found.**) of the NYSE Holdings LLC Operating Agreement, unless the board of directors of NYSE Holdings shall have determined that neither such person nor any of its related persons is an NYSE National ETP Holder.

Proposed Fifth Amended and Restated Certificate of Incorporation of NYSE Group, Inc.
(“NYSE Group Certificate of Incorporation”)

The NYSE Group Certificate of Incorporation is being amended as follows:

- On the first page, add “Fifth” and delete “Fourth” before “Amended and Restated Certificate of Incorporation” in the heading. The Recitations

would be amended to reflect that this would be the fifth amendment and restatement. First, the Fifth Recitation would be updated to reflect that a Fourth Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on December 29, 2014. A new Sixth Recitation would be updated to reflect that the Fifth Amended and Restated Certificate of Incorporation has been duly adopted. The current Sixth Recitation would become the Seventh and would reflect that the Fourth Amended and Restated Certificate of Incorporation is amended and restated in its entirety.

- NYSE National would be added to the list of “Regulated Subsidiaries” in Article 4 (Stock), Section 4(b)(1), which currently includes the NYSE, NYSE Market (DE), NYSE Regulation, NYSE Arca, LLC, NYSE Arca Equities, and NYSE MKT, and the obsolete references to NYSE Market (DE) and NYSE Regulation would be deleted.
- To distinguish between the ETP Holders of NYSE Arca Equities and those of NYSE National, Section 4(b)(1)(y) of Article IV would be amended to define an ETP Holder of NYSE Arca Equities as an “NYSE Arca Equities ETP Holder.” An outdated reference to NYSE Market (DE) would also be deleted.

Section 4(b)(1)(y) would also be amended to add a provision to [sic] similar to those in place for the other NYSE Exchanges providing that, for so long as NYSE Group directly or indirectly controls NYSE National (or its successor), neither such person nor any of its related persons is an ETP

Holder (as defined in the rules of NYSE National, as such rules may be in effect from time to time) of NYSE National (defined as an “NYSE National ETP Holder”) and that any such person that is a related person of an NYSE National ETP Holder shall hereinafter also be deemed to be an “NYSE National ETP Holder” for purposes of the certificate of incorporation, as the context may require.

- Further, subsection 4(b)(1)(z) of Article IV would be amended to define an ETP Holder of NYSE Arca Equities as an “NYSE Arca Equities ETP Holder” and delete an outdated reference to NYSE Market (DE). Subsection 4(b)(1)(z) would also be amended to incorporate NYSE National into the existing restriction on the ICE Holdings Board of Directors, such that it would be restricted from adopting a resolution to approve the exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast on such matter, where neither such person nor any of its related persons is, with respect to NYSE National, an NYSE National ETP Holder.
- A new subpart (vii) would be added to subsection 4(b)(2)(C) of Article IV to incorporate NYSE National into the existing restriction on the NYSE Group Board of Directors, such that it would be restricted from adopting a resolution to approve the exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast on such matter, where

neither such person nor any of its related persons is, with respect to NYSE National, an NYSE National ETP Holder.¹⁷

- Article X (Confidential Information) would be amended to extend the same protection to confidential information relating to the self-regulatory function of NYSE National or its successor and delete obsolete references to NYSE Market (DE) and NYSE Regulation.
- Article XII (Amendments to Certificate of Incorporation) provides that, for so long as NYSE Group controls the Regulated Subsidiaries, before any amendment or repeal of any provision of the Certificate of Incorporation shall be effective, such amendment or repeal shall either (a) be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder or (b) be submitted to the boards of directors of NYSE, NYSE Market (DE), NYSE Regulation, NYSE Arca, NYSE Arca Equities, and NYSE MKT or the boards of directors of their successors. Article XII would be amended to add NYSE National to subsection (b) and delete references to NYSE Market (DE) and NYSE Regulation.

Proposed Third Amended and Restated Bylaws of NYSE Group, Inc. (“NYSE Group Bylaws”)

The NYSE Group Bylaws are being amended as follows:

¹⁷ An obsolete reference to NYSE Market (DE) would also be deleted from Article IV, 4(b)(2)(C)(v).

- Add “Third” and delete “Second” before “Amended and Restated Bylaws” in the heading to reflect that this would be the third amendment and restatement.
- Article VII (Miscellaneous), Section 7.9(A)(b) currently provides that, for so long as NYSE Group controls any of the NYSE Exchanges, any amendment to or repeal of the ICE Bylaws must either be (i) filed with or filed with and approved by the Commission under section 19 of the Exchange Act and the rules promulgated thereunder, or (ii) submitted to the boards of directors of the NYSE, NYSE Market (DE), NYSE Regulation, NYSE Arca, NYSE Arca Equities, and NYSE Alternext US LLC or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by ICE. Section 7.9(A)(b) would be amended to delete obsolete references to NYSE Market (DE) and NYSE Regulation, replace the outdated reference to “NYSE Alternext US LLC” with “NYSE MKT LLC,” and add NYSE National.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act¹⁸ in general, and with Section 6(b)(1)¹⁹ 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

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(1).

associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange believes that the proposed changes to the corporate documents of the NYSE Group and its intermediary and ultimate parent entities, including the ICE bylaws and director independence policy, ICE Holdings bylaws and certificate of incorporation, NYSE Holdings operating agreement, and the NYSE Group bylaws and certificate of incorporation, to reflect the Acquisition, including updating corporate names, would contribute to the orderly operation of the Exchange by adding clarity and transparency to the Exchange's rules and would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members. The Exchange therefore believes that approval of the amendment to the Bylaws is consistent with Section 6(b)(1).

For similar reasons, the Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act²⁰ because the proposed rule change would be consistent with and facilitate [sic] would create a governance and regulatory structure that 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 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. As discussed above, the proposed updates to the corporate documents and replacement of outdated or obsolete references removes impediments to and perfects the mechanism of a free and open market by

²⁰ 15 U.S.C. 78f(b)(5).

removing confusion that may result from having these references in the governing documents following the Acquisition. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The Exchange further believes that eliminating an obsolete reference would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such obsolete references will also further the goal of transparency and add clarity to the Exchange's rules.

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 intended to address competitive issues but rather is concerned solely with updating the Exchange's rules to reflect the Acquisition and to remove obsolete references.

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 self-regulatory organization 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-2016-122 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-2016-122. 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-2016-122 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.²¹

Eduardo A. Aleman
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).