

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80085; File No. SR-NYSEMKT-2017-06)

February 22, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Eighth Amended and Restated Certificate of Incorporation of Intercontinental Exchange Holdings, Inc. and the Fifth Amended and Restated Certificate of Incorporation of NYSE Group, Inc.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on February 8, 2017, NYSE MKT LLC (“NYSE MKT” or the “Exchange”), 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend (a) the Eighth Amended and Restated Certificate of Incorporation of Intercontinental Exchange Holdings, Inc. (the “ICE Holdings Certificate”) to add a reference to the name under which it filed its original certificate of incorporation, and (b) the Fifth Amended and Restated Certificate of Incorporation of NYSE Group, Inc. (the “Fifth Amended NYSE Group Certificate”) to update obsolete references. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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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.

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

The Exchange proposes to make non-substantive changes to (a) the ICE Holdings Certificate to add a reference to the name under which it filed its original certificate of incorporation, and (b) the Fifth Amended NYSE Group Certificate to update obsolete references.

ICE Holdings Certificate

The Exchange's parent, NYSE Group, is a wholly-owned subsidiary of NYSE Holdings LLC, which is in turn 100% owned by Intercontinental Exchange Holdings, Inc. ("ICE Holdings"). Intercontinental Exchange, Inc. ("ICE"), a public company listed on the New York Stock Exchange, owns 100% of ICE Holdings.

The original certificate of incorporation of ICE Holdings was filed in 2000, under the name "IntercontinentalExchange, Inc." In 2014, ICE Holdings changed its name from "IntercontinentalExchange, Inc." to "Intercontinental Exchange Holdings, Inc." At the same

time, ICE Holding’s parent, ICE, changed its name from “IntercontinentalExchange Group, Inc.” to “Intercontinental Exchange, Inc.”<sup>4</sup>

In response to a comment received from the State of Delaware Department of State, the Exchange proposes to amend paragraph (1) of the ICE Holdings Certificate to add a reference to the fact that the original certificate of incorporation was filed under the name “IntercontinentalExchange, Inc.” The revised paragraph would read as follows (proposed new text underlined):

- (1) The present name of the Corporation is Intercontinental Exchange Holdings, Inc. The original Certificate of Incorporation of the Corporation was filed on June 16, 2000 (the “Original Certificate of Incorporation), and the name under which the Corporation filed the Original Certificate of Incorporation was IntercontinentalExchange, Inc.

Fifth Amended NYSE Group Certificate

The Securities and Exchange Commission approved the Fifth Amended NYSE Group Certificate on January 30, 2017.<sup>5</sup>

The Exchange proposes to amend the Fifth Amended NYSE Group Certificate to update obsolete references to the Fourth Amended and Restated Certificate of Incorporation of NYSE Group (“Fourth Amended NYSE Group Certificate”). More specifically, the Exchange proposes to:

- amend Article XIV, “Effective Time,” to replace “Fourth” with “Fifth” and to replace December 29, 2014, the date of effectiveness of the Fourth Amended

<sup>4</sup> See Securities Exchange Release No. 72156 (May 13, 2014), 79 FR 28782 (May 19, 2014) (SR-NYSEMKT-2014-41).

<sup>5</sup> See Securities Exchange Release No. 79901 (January 30, 2017), 82 FR 9251 (February 3, 2017) (SR-NYSE-2016-90, SR-NYSEMKT-2016-122, and SR-NYSEArca-2016-167).

NYSE Group Certificate, with a placeholder which will be completed with the date that the Fifth Amended NYSE Group Certificate becomes effective; and

- on the signature page of the NYSE Group Certificate, replace “Fourth” with “Fifth” and replace December 29, 2014, with a placeholder which will be completed with the date that the Fifth Amended NYSE Group Certificate becomes effective.

No other changes to the ICE Holdings Certificate or Fifth Amended NYSE Group Certificate are proposed.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act<sup>6</sup> in general, and with Section 6(b)(1)<sup>7</sup> 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 proposed amendment to the ICE Holdings Certificate to add a reference to the name under which it filed its original certificate of incorporation is a non-substantive, ministerial change requested by the State of Delaware Department of State that does not impact either the governance or ownership of the Exchange. The Exchange believes that the proposed change is consistent with Section 6(b)(1) because it 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

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(1).

Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members.

For similar reasons, the Exchange also believes that the proposed change furthers the objectives of Section 6(b)(5) of the Exchange Act<sup>8</sup> because the proposed rule change would be consistent with and facilitate 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 change to amend the Fifth Amended NYSE Group Certificate, which would replace obsolete references to the Fourth Amended NYSE Group Certificate with references to the Fifth Amended NYSE Group Certificate and update the date of effectiveness, removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having these references in the Fifth Amended NYSE Group Certificate. The Exchange further believes that the proposal removes impediments to and would perfect 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 Fifth Amended NYSE Group Certificate. The Exchange further believes that eliminating obsolete references would be consistent 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

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<sup>8</sup> 15 U.S.C. 78f(b)(5).

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 to make non-substantive changes concerned solely with the clarity and transparency of its parent entities' governing documents.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) of the Act<sup>11</sup> normally does not become operative before 30 days from the date of the filing. However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed changes are non-substantive and would provide clarity and transparency to its parent entities' governing documents. The Exchange represents that the proposed rule change would have no impact on either the governance or ownership of the Exchange. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed changes are non-substantive and will provide clarity to the Exchange's rules. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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

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<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2017-06 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-2017-06. 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 such 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-2017-06, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).