

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82084; File No. SR-NYSENAT-2017-05)

November 15, 2017

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Governing Documents of Its Intermediate Parent Companies Intercontinental Exchange Holdings, Inc., NYSE Holdings LLC and NYSE Group, Inc. to Make Them More Consistent with the Governing Documents of Their Ultimate Parent Intercontinental Exchange, Inc.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act” or “Exchange Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on November 3, 2017, NYSE National, Inc. (the “Exchange” or “NYSE National”) 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 to [sic] amend the governing documents of its intermediate parent companies Intercontinental Exchange Holdings, Inc. (“ICE Holdings”), NYSE Holdings LLC (“NYSE Holdings”), and NYSE Group, Inc. (“NYSE Group”) to make them more consistent with the governing documents of their ultimate parent Intercontinental Exchange, Inc. (“ICE”), including by (a) streamlining references to ICE subsidiaries that either are or control national securities exchanges and deleting references to other ICE subsidiaries; and (b) amending the provisions regarding limitations on claims, voting and ownership concentration limitations,

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

and confidential information. In addition, the Exchange proposes to make a non-substantive change to the ICE certificate of incorporation. 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.

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 Exchange proposes to amend the governing documents of its intermediate parent companies ICE Holdings, NYSE Holdings, and NYSE Group (together, the "Intermediate Holding Companies") to make them more consistent with the ICE governing documents, including by (a) streamlining references to ICE subsidiaries that either are or control national securities exchanges and deleting references to other ICE subsidiaries; and (b) amending the provisions regarding limitations on claims, voting and ownership concentration limitations, and confidential information. In addition, the Exchange proposes to make a non-substantive change to the ICE certificate of incorporation.

More specifically, the Exchange proposes to amend the following documents (collectively, the "Governing Documents"):

- Eighth Amended and Restated Certificate of Incorporation of ICE Holdings (“ICE Holdings Certificate”) and Fifth Amended and Restated Bylaws of ICE Holdings (“ICE Holdings Bylaws”);
- Eighth Amended and Restated Limited Liability Company Agreement of NYSE Holdings (“NYSE Holdings Operating Agreement”); and
- Fifth Amended and Restated Certificate of Incorporation of NYSE Group (“NYSE Group Certificate”) and Third Amended and Restated Bylaws of NYSE Group (“NYSE Group Bylaws”).

As discussed below, the proposed changes to the Governing Documents would make the relevant provisions more consistent with the Fourth Amended and Restated Certificate of Incorporation of ICE (“ICE Certificate”) and Eighth Amended and Restated Bylaws of ICE (“ICE Bylaws”).⁴

ICE, the ultimate parent of the Exchange, owns 100% of the equity interest in ICE Holdings, which in turn owns 100% of the equity interest in NYSE Holdings. NYSE Holdings owns 100% of the equity interest of NYSE Group, which in turn directly owns 100% of the equity interest of the Exchange and its national securities exchange affiliates, the New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”), and NYSE American LLC (“NYSE American”).⁵

⁴ See Securities Exchange Act Release No. 80752 (May 24, 2017), 82 FR 25018 (May 31, 2017) (SR-NYSE-2017-13; SR-NYSEArca-2017-29; SR-NYSEMKKT-2017-17; SR-NYSEENAT-2017-01). ICE is a publicly traded company listed on the NYSE.

⁵ The Exchange’s affiliates NYSE, NYSE American (previously NYSE MKT LLC), and NYSE Arca have each submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2017-57, SR-NYSEAmer-2017-29, and SR-NYSEArca-2017-125.

In addition, the Exchange proposes to make a nonsubstantive change to the ICE Certificate.

Definition of Exchange

With the exception of the NYSE Group Bylaws, the Governing Documents define “U.S. Regulated Subsidiary” and “U.S. Regulated Subsidiaries” and, in the case of the NYSE Group Certificate, “Regulated Subsidiary” and “Regulated Subsidiaries” to mean, individually or collectively, the four national securities exchanges owned by ICE (the NYSE, NYSE American, NYSE Arca, and NYSE National), NYSE Arca, LLC, and NYSE Arca Equities, Inc. (“NYSE Arca Equities”), or their successors, in each case to the extent that such entities continue to be controlled, directly or indirectly, by the relevant Intermediate Holding Company. The NYSE Group Bylaws list the relevant entities rather than use a defined term.

Unlike the Governing Documents, the ICE Certificate and ICE Bylaws use the defined term “Exchange” or “Exchanges” instead of “U.S. Regulated Subsidiary” or “U.S. Regulated Subsidiaries.”⁶ “Exchange” is defined as a national securities exchange registered under Section 6 of the Exchange Act⁷ that is directly or indirectly controlled by ICE.⁸ The Exchange proposes to amend the Governing Documents to be consistent with the ICE Certificate and ICE Bylaws by using the terms “Exchange” instead of “U.S. Regulated Subsidiary” or “Regulated Subsidiary.” Similarly, the Exchange proposes to use “Exchange” or “Exchanges,” as applicable, in place of “U.S. Regulated Subsidiaries” or “Regulated Subsidiaries,” and to use “Exchange” or “Exchanges,” as applicable, instead of lists of specific entities.

⁶ See 82 FR 25018, supra note 4, at 25019-25020.

⁷ 15 U.S.C. 78f.

⁸ See ICE Certificate, Art. V Sec. A(3)(a), and ICE Bylaws, Art. III, Sec. 3.15.

As a result of the proposed change, the Governing Documents would no longer include references to NYSE Arca, LLC or NYSE Arca Equities. The Exchange believes omitting references to NYSE Arca, LLC, a subsidiary of NYSE Group, is appropriate because the Exchange Act definition of “exchange” states that “exchange” “includes the market place and the market facilities maintained by such exchange.”⁹ NYSE Arca, as the national securities exchange, has the regulatory and self-regulatory responsibility for the NYSE Arca options and equities markets. The references to NYSE Arca Equities are obsolete, as it has been merged out of existence.¹⁰

The Exchange accordingly proposes the following changes:

- In the ICE Holdings Certificate, the definitions of “U.S. Regulated Subsidiary” and “U.S. Regulated Subsidiaries” in Article V, Section A.10 would be deleted, and the definition of “Exchange” added to Article V, Section A(1).¹¹ In the ICE Holdings Bylaws, the definitions of “U.S. Regulated Subsidiary” and “U.S. Regulated Subsidiaries” in Article III, Section 3.15 would be deleted, and in the NYSE Group Certificate, the definitions of “Regulated Subsidiary” and “Regulated Subsidiaries” in Article IV, Section 4(b)(1)(A) would be deleted, and the definition of “Exchange” added in the deleted definitions’ place.
- In Article 1, Section 1.1 of the NYSE Holdings Operating Agreement, the definitions of “New York Stock Exchange,” “NYSE Arca,” “NYSE Arca Equities,” “NYSE MKT,” “NYSE National,” “U.S. Regulated Subsidiary,” and

⁹ 15 U.S.C. 78c(a)(1).

¹⁰ See Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40).

¹¹ The definition of “Exchange” would replace “any U.S. Regulated Subsidiary (as defined below)” in Art. V, Sec. A(1).

“U.S. Regulated Subsidiaries” would be deleted and the definition of “Exchange” added.

- In the NYSE Group Certificate, Article IV, Section 4(b)(1)(A)(w), the text “of the Regulated Subsidiaries, in each case to the extent that such entities continue to be controlled, directly or indirectly, by the Corporation,” would be replaced with “Exchange,” and “the Regulated Subsidiaries” would be replaced with “each Exchange.”
- In the NYSE Group Bylaws, the list of national securities exchanges, NYSE Arca, LLC, NYSE Arca Equities and their successors in Article VII, Section 7.9(b) would be replaced with the definition of “Exchange.”

Throughout the Governing Documents, “U.S. Regulated Subsidiary,” “U.S. Regulated Subsidiary’s,” “U.S. Regulated Subsidiaries,” “Regulated Subsidiary,” “Regulated Subsidiary’s,” and “Regulated Subsidiaries” would be replaced with “Exchange,” “Exchange’s,” or “Exchanges,” as applicable. Similarly, lists of any or all of the ICE national securities exchanges, NYSE Arca Equities, NYSE Arca, LLC, their successors, facilities, or the boards of directors of successors, would be replaced with “Exchange” or “Exchanges,” as applicable.¹²

When making such replacements, the Exchange would utilize a comma or the terms “any,” “each,” “an,” or “one or more” and delete the terms “the” or “of the” as necessary to integrate the term into the text. Finally, references to “their” would be amended to “its” as required by the context.¹³

¹² For example, in Article XII, clause (b) of the NYSE Group Certificate, “the boards of directors of New York Stock Exchange, NYSE Arca, NYSE Arca Equities, NYSE MKT and NYSE National or the boards of directors of their successors” would be amended to “the boards of directors of each Exchange.”

¹³ For example, in Article III, Section 3.14(b) of the ICE Holdings Bylaws and Article III,

Definition of Intermediate Holding Companies

The ICE Holdings and NYSE Holdings Governing Documents reference NYSE Holdings and NYSE Group by name.¹⁴ The ICE Certificate and ICE Bylaws use the defined term “Intermediate Holding Companies” instead, defining an “Intermediate Holding Company” as “any entity controlled by the Corporation that is not itself an Exchange but that directly or indirectly controls an Exchange.”¹⁵ The Exchange proposes to amend the Governing Documents to be consistent with the ICE Certificate and ICE Bylaws by using the term “Intermediate Holding Companies” instead of specific names.

The Exchange accordingly proposes the following changes to the ICE Holdings Certificate, Article V, Section A(3)(a); ICE Holdings Bylaws, Article III, Section 3.14(a)(2); and NYSE Holdings Operating Agreement:

- In these ICE Holdings Governing Document provisions, the initial references to NYSE Holdings or NYSE Group, including the text “(if and to the extent that NYSE Group continues to exist as a separate entity),” would be replaced with the definition of “Intermediate Holding Company.”¹⁶ The additional references to NYSE Holdings or NYSE Group would be replaced with the terms “Intermediate Holding Company” and “Intermediate Holding Companies,” as applicable.

Section 3.12(c) of the NYSE Holdings Operating Agreement, “their regulatory authority” would be amended to “its regulatory authority.”

¹⁴ The NYSE Group Governing Documents do not make such references because there are no Intermediate Holding Companies between NYSE Group and the Exchange or its national securities exchange affiliates.

¹⁵ See ICE Certificate, Art. V, Sec. A.3(a); ICE Bylaws, Art. III, Sec. 3.14(a)(2); and 82 FR 25018, supra note 4, at 25019. The Intermediate Holding Companies between ICE and the Exchange are ICE Holdings, NYSE Holdings, and NYSE Group.

¹⁶ In the ICE Holdings Certificate, the word “respective” also would be deleted.

- In the NYSE Holdings Operating Agreement, Article 1, Section 1.1, the definition of “NYSE Group” would be deleted and the definition of “Intermediate Holding Company” added, and in Article III, Section 3.12(b)(2) and Article IX, Section 9.1(a)(3)(A) and (b)(3)(A), references to “NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity)” would be replaced with “Intermediate Holding Companies” or “Intermediate Holding Company,” as applicable.

Considerations of the Board

The ICE Holdings Bylaws, NYSE Holdings Agreement, and NYSE Group Certificate have provisions setting forth considerations directors must take into account in discharging their responsibilities.¹⁷ Each such provision limits claims against directors, officers and employees as well as the relevant Intermediate Holding Company. The Exchange proposes to amend such provisions to substantially conform them to the analogous provision in the ICE Bylaws, as well as the governing documents of other holding companies of national securities exchanges, which are substantially similar.¹⁸

The Exchange accordingly proposes the following changes to the ICE Holdings Bylaws, Article III, Section 3.14(c); NYSE Group Certificate, Article V, Section 8; and NYSE Holdings Operating Agreement, Section 3.12(d):

¹⁷ See ICE Holdings Bylaws, Art. III, Sec. 3.14; NYSE Holdings Agreement, Art. III, Sec. 3.12; and NYSE Group Certificate Art. V, Sec. 8.

¹⁸ See ICE Bylaws, Art. III, Sec. 3.14(c); Amended and Restated Bylaws of Bats Global Markets Holdings, Inc., Art. VII, Sec. 7.2; Amended and Restated Limited Liability Company Agreement of BOX Holdings Group LLC, Art. 4, Sec. 4.12; Bylaws of IEX Group, Inc., Art. VII, Sec. 34; and Amended and Restated Bylaws of Miami International Holdings, Inc., Art. VII, Sec. 1.

- The ICE Holdings Bylaws and NYSE Group Certificate provisions would be expanded in scope to apply to any “past or present stockholder, employee, beneficiary, agent, customer, creditor, community or regulatory authority or member thereof or other person or entity,” and to protect agents as well as directors, officers and employees. To implement the change, the Exchange proposes to amend the final sentences of the ICE Holdings Bylaws and NYSE Group Certificate provisions as follows (deletions [bracketed], additions underlined):

No past or present stockholder, employee, [former employee,] beneficiary, agent, customer, creditor, community or regulatory authority or member thereof or other person or entity shall have any rights against any director, officer, [or] employee or agent of the Corporation or the Corporation under this Section

- The NYSE Holdings Operating Agreement provision would be expanded in scope to apply to any “past or present Manager, employee, beneficiary, agent, customer, creditor, community or regulatory authority or member thereof or other person or entity,” and to protect agents as well as Managers, officers and employees. To implement the change, the Exchange proposes to amend the final sentence of the provision as follows (deletions [bracketed], additions underlined):

No past or present Manager, employee, [former employee,] beneficiary, agent, customer, creditor, community or regulatory authority or member thereof or other person or entity shall have any rights against any

Manager, officer, [or] employee or agent of the Company or the Company under Section 3.12.

Limitations on Voting and Ownership

The ICE Holdings Certificate, NYSE Holdings Operating Agreement, and NYSE Group Certificate have provisions that establish voting and ownership concentration limitations on owners of their respective common stock above certain thresholds, which apply for so long as the relevant Intermediate Holding Company owns any U.S. Regulated Subsidiary (the “Limitation Provisions”).¹⁹ Such provisions authorize the relevant entity’s Board of Directors to grant exceptions to the voting and ownership concentration limitations if the Board of Directors makes certain determinations.

The ICE Certificate has a similar voting and ownership concentration limitation provision.²⁰ The Exchange proposes to amend the Limitations Provisions to make them more consistent with the provision in the ICE Certificate.

Definition of Member

Currently, the Limitation Provisions include lengthy provisions listing the different categories of members and permit holders of each of the NYSE, NYSE American, NYSE Arca, and NYSE National.²¹ Consistent with the ICE Certificate,²² the Exchange proposes to replace such provisions with the defined term “Member,” or, in the case of the NYSE Holdings

¹⁹ See ICE Holdings Certificate, Art. V, Sec. A and B; NYSE Holdings Operating Agreement, Art. IX, Sec. 9.1(a) and (b); and NYSE Group Certificate, Art. IV, Sec. 4(b)(1) and (2).

²⁰ See ICE Certificate, Art. V, Sec. A and B, and 82 FR 25018, supra note 4, at 25020.

²¹ See ICE Holdings Certificate, Art. V, Sec. A(3)(c); NYSE Holdings Operating Agreement, Art. IX, Sec. 9.1(a)(3)(c); and NYSE Group Certificate, Art. IV, Sec. 4(b)(1)(A)(y).

²² See ICE Certificate, Art. V, Sec. A(3)(c) and (8).

Operating Agreement, “Exchange Member,” defined to mean a person that is a “member” of an exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act.²³

The Exchange believes that using “Member” or “Exchange Member” in place of the lists of categories of members and permit holders presently in the Governing Documents would simplify the Limitation Provisions, avoiding exchange-by-exchange descriptions of categories of members and permit holders without substantive change. Each of the categories listed—an ETP Holder, OTP Holder or OTP Firm of NYSE Arca, a “member” or “member organization” of the NYSE or NYSE American, or an ETP Holder of NYSE National—is a “member” of an exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act.²⁴

The Exchange believes that the use of “Member” and the changes to remove the descriptions of categories of members and permit holders would be appropriate because it would align the Limitation Provisions more closely with the ICE Certificate, as well as voting and ownership concentration limits in the certificates of incorporation of other companies that own one or more national securities exchanges, which use a similar description of membership.²⁵ The Exchange accordingly proposes the following changes:

- The definition of “Member” would be added to the ICE Holdings Certificate, Article V.A.8, and NYSE Group Certificate, Article IV, Section 4(b)(1)(F).

²³ 15 U.S.C. 78c(a)(3)(A). NYSE Holdings uses “Exchange Member” because, as a limited liability company, it has a Member, which is ICE Holdings.

²⁴ 15 U.S.C. 78c(a)(3)(A). Former NYSE Arca Equities ETP Holders are now ETP Holders of NYSE Arca. See 82 FR 40044, supra note 10, at 40044.

²⁵ See Second Amended and Restated Certificate of Incorporation of CBOE Holdings, Inc. (“CBOE Certificate”), Art. Sixth, Sec. (a)(ii)(C) and (b)(ii)(D) (“Trading Permit Holder”); Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., Article Ninth (a)(ii) (“Exchange Member”).

Articles V.A.8 through 10 of the ICE Holdings Certificate would be renumbered accordingly.

- In the NYSE Holdings Operating Agreement, Article I, Section 1.1, the definition of “Exchange Member” would be added and the definitions of “MKT Member,” “NYSE Arca ETP Holder,” “NYSE Member,” “NYSE National ETP Holder,” “OTP Firm,” and “OTP Holder” would be deleted.
- In the NYSE Group Certificate, Article IV, Section 4(b)(2)(C)(iv), “an NYSE Arca ETP Holder or an OTP Holder or OTP Firm” would be replaced with “a Member of any Exchange.”²⁶

Approval Requirements for Exceeding Voting and Concentration Limits

The Exchange proposes that, in the case of a person seeking approval to exercise voting rights in excess of 20% of the outstanding votes, the amended Limitation Provisions require that neither such person nor any of its related persons be a Member of an Exchange, instead of referring to the various categories of Exchange membership. Accordingly, the Exchange proposes to make the following changes to ICE Holdings Certificate, Article V.A.3.c; NYSE Holdings Operating Agreement, Article IX, Section 9.1(a)(3)(C); and the NYSE Group Certificate, Article IV, Section 4(b)(1)(A)(y):

- In the provisions of the ICE Holdings and NYSE Holdings Governing Documents, the text “NYSE Arca, Inc. (‘NYSE Arca’) or NYSE Arca Equities, Inc. (‘NYSE Arca Equities’) or any facility of NYSE Arca” would be replaced with “one or more Exchanges.” In addition, “and” would be added between clauses (i) and (ii).

²⁶ See ICE Certificate, Art. V, Sec. B(3)(d).

- In the provision of the NYSE Group Certificate, “the NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca” would be replaced with “one or more Exchanges.” In addition, “and” would be added between clauses (1) and (2).
- In all three provisions, the text “a Member (as defined below) of any Exchange” would replace the text from “an ETP Holder (as defined in the NYSE Arca Equities rules” through the end of the paragraph, with the exception that the NYSE Holdings text does not include “(as defined below).”

In addition, the Exchange proposes the following changes to the ICE Holdings Certificate, Article V.A.3.d; NYSE Holdings Operating Agreement, Article IX, Section 9.1(a)(3)(D); and the NYSE Group Certificate, Article IV, Section 4(b)(1)(A)(z):

- In all three provisions, the text “NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca” would be replaced with “one or more Exchanges,” with the exception that the NYSE Group text has the word “the” at its start. The text “a Member of any Exchange” would replace the text from “an NYSE Arca ETP Holder” through the end of the paragraph.
- In the provisions of the ICE Holdings and NYSE Holdings Governing Documents, the word “and” would be added between (i) and (ii). In the provision of the NYSE Group Certificate, the word “and” would be added between clauses (1) and (2).

The Exchange proposes that the conditions relating to a person seeking approval to exceed the ownership concentration limitation be similarly amended. The Exchange accordingly proposes the following changes to the ICE Holdings Certificate, Article V.B.3.d; NYSE

Holdings Operating Agreement, Article IX, Section 9.1(b)(3)(D); and the NYSE Group Certificate, Article IV, Section 4(b)(2)(C)(iv):

- The word “and” would be added immediately before the provisions.
- The text “NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca” would be replaced with “any Exchange,” with the exception that the NYSE Group text has the word “the” at its start.
- The text from “an NYSE Arca ETP Holder” through the end of the next three subparagraphs would be deleted and replaced with “a Member of any Exchange.”

Definition of Related Persons

Currently, the Limitation Provisions include lengthy definitions of “Related Persons.” The Exchange proposes to amend such definitions to eliminate the exchange-by-exchange description. Use of “Member” would permit a simplification, without substantive change, of the portion of the definition of the term “Related Persons” relating to members and trading permit holders. The revised definitions would be the same as the definition in the ICE Certificate, subject to differences in numbering and, in the NYSE Holdings Operating Agreement, certain terms.²⁷

The Exchange accordingly proposes the following changes to the definitions of “Related Persons” in the ICE Holdings Certificate, current Article V.A(9); NYSE Holdings Operating Agreement, Article I, Section 1.1; and NYSE Group Certificate, Article IV, Section 4(b)(1)(E):

- In the fourth subparagraph, the text “‘member organization’ (as defined in the rules of New York Stock Exchange, as such rules may be in effect from time to time), any ‘member’ (as defined in the rules of New York Stock Exchange, as

²⁷ See ICE Certificate, Art. V, Sec. A(10). NYSE Holdings uses “Interests of the Company” rather than “shares of stock of the Corporation.”

such rules may be in effect from time to time)” would be replaced with “Member, any Person.”

- In the fifth subparagraph, the text “an OTP Firm, any OTP Holder that is associated with such Person” would be replaced with “a natural person and is a Member, any broker or dealer that is also a Member with which such Person is associated.”
- In the ICE Holdings Certificate and NYSE Holdings Operating Agreement, “and” would be added between the seventh and eighth subparagraphs. In the NYSE Group Certificate, “and” would be added between the eighth and ninth subparagraphs.
- In the ICE Holdings Certificate and NYSE Holdings Operating Agreement, subparagraphs nine through 12 would be deleted. In the NYSE Group Certificate, subparagraphs six and ten through 12 would be deleted, and the provisions renumbered accordingly.

Confidential Information

The Exchange proposes to amend the confidential information provisions in the ICE Holdings Bylaws, NYSE Holdings Operating Agreement, and NYSE Group Certificate. The proposed amendments would make such Governing Documents more consistent with the confidential information provision in the ICE Bylaws.²⁸

Accordingly, in the ICE Holdings Bylaws, Article VIII, Section 8.3(b); NYSE Holdings Operating Agreement, Article XII, Section 12.3; and NYSE Group Certificate, Article X, the text “U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S.

²⁸ See ICE Bylaws, Art. VIII. See also 82 FR 25018, supra note 4, at 25020.

Regulated Subsidiary has regulatory authority or oversight” would be replaced with “Exchange.”²⁹

The proposed change would remove the provisions that allow any U.S. Regulated Subsidiary to inspect and copy the books and records of another U.S. Regulated Subsidiary over which the first has regulatory authority or oversight. As a result, the confidential information provisions would no longer provide that NYSE Arca may inspect the books and records of NYSE Arca, LLC or NYSE Arca Equities. However, the proposed change would have no substantive effect, because pursuant to NYSE Arca Rule 3.12³⁰ NYSE Arca would retain its authority over the books and records of NYSE Arca, LLC, and NYSE Arca Equities no longer exists. The NYSE, NYSE American, NYSE Arca and NYSE National do not have regulatory authority or oversight over each other.

The Exchange proposes the following additional changes to the provisions:

- In the ICE Holdings Bylaws, Article VIII, Sections 8.1 and 8.2, and NYSE Holdings Operating Agreement, Article XII, Sections 12.1 and 12.2, “U.S. Subsidiaries’ Confidential Information” would be amended to “Exchange Confidential Information.”
- In the NYSE Holdings Operating Agreement, Article 1, Section 1.1, the definition of “U.S. Subsidiaries’ Confidential Information” would be deleted and the definition of “Exchange Confidential Information” added.

²⁹ The text of the NYSE Group Certificate uses “Regulated Subsidiary” instead of “U.S. Regulated Subsidiary.”

³⁰ NYSE Arca Rule 3.12 provides, among other things, that the books and records of NYSE Arca, LLC are deemed to be the books and records of NYSE Arca for purposes of and subject to oversight pursuant to the Exchange Act and subject to inspection and copying by NYSE Arca. See ICE Bylaws, Art. VIII, Sec. 8.3.

Additional Proposed Changes to the Governing Documents

In addition to the above, the Exchange proposes that Article II of the ICE Holdings Certificate be updated to include the name and building of its registered office in the State of Delaware. In addition, conforming changes would be made to the title, recitals, date and signature line, as applicable, of the Governing Documents.

ICE Certificate

The Exchange proposes to make a non-substantive amendment to Article V, Section A(3)(a) of the ICE Certificate. Due to an oversight, the text of the ICE Certificate approved by the ICE shareholders at the ICE annual meeting omitted the word “respective” from Article V, Section A(3)(a).³¹ To conform the ICE Certificate filed with the Commission to the text approved by the shareholders, the Exchange proposes to delete the word “respective” from clause (i) of the provision, which would read as follows (proposed deletion in bracket):

will not impair the ability of any national securities exchange registered under Section 6 of the Exchange Act that is directly or indirectly controlled by the Corporation (each such national securities exchange so controlled, an “Exchange”), any entity controlled by the Corporation that is not itself an Exchange but that directly or indirectly controls an Exchange (each such controlling entity, an “Intermediate Holding Company”) or the Corporation to discharge their [respective] responsibilities under the Exchange Act and the rules and regulations thereunder

The Exchange does not propose to make any other changes to the ICE Certificate.

³¹ See Intercontinental Exchange, Inc. Notice of 2017 Annual Meeting and Proxy Statement, at page A-5, available at <https://ir.theice.com/~media/Files/I/Ice-IR/quarterly-results/2016/proxy-statement-2016.pdf>.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act³² in general, and with Section 6(b)(1)³³ 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.

In particular, the Exchange believes that the proposed amendments to replace references to the U.S. Regulated Subsidiaries and to the NYSE, NYSE American, NYSE Arca, NYSE Arca, LLC and NYSE Arca Equities with references to an “Exchange” or the “Exchanges,” as appropriate, would contribute to the orderly operation of the Exchange by adding clarity and transparency to the Exchange’s rules by eliminating references in the Governing Documents to entities that are not national securities exchanges. The Exchange Act definition of “exchange” states that “exchange” “includes the market place and the market facilities maintained by such exchange.”³⁴ Accordingly, all market places and market facilities maintained by an Exchange would fall within the definition of Exchange and therefore would fall within the scope of the Governing Documents. The Exchange notes that the proposed change would align the Governing Documents voting and ownership concentration limits in the certificates of incorporation of other companies that own one or more national securities exchanges, which do not include references to subsidiaries other than national securities exchanges.³⁵ In addition, it

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(1).

³⁴ 15 U.S.C. 78c(a)(1).

³⁵ See CBOE Certificate, Art. Fifth, Sec. (a)(v), and Art. Sixth, Sec. (a)(ii)(A) (“Regulated

would contribute to the orderly operation of the Exchange by adding clarity and transparency to the Exchange’s rules by eliminating obsolete references to NYSE Arca Equities, which has been merged out of existence.

As a result of the proposed use of “Exchanges” instead of “U.S. Regulated Subsidiaries,” the confidential information provisions of the Governing Documents would no longer provide that any U.S. Regulated Subsidiary is authorized to inspect the books and records of another U.S. Regulated Subsidiary over which the first has regulatory authority or oversight, including that NYSE Arca may inspect the books and records of NYSE Arca, LLC or NYSE Arca Equities. The proposed change would add further clarity and transparency to the Exchange’s rules without having a substantive effect, as, pursuant to NYSE Arca Rule 3.12, NYSE Arca would retain its authority over the books and records of NYSE Arca, LLC, NYSE Arca Equities no longer exists and the NYSE, NYSE American, NYSE Arca and NYSE National do not have regulatory authority or oversight over each other.

The Exchange believes that the proposed use in the Governing Documents of the defined term “Intermediate Holding Company” in place of lists of intermediate holding companies would contribute to the orderly operation of the Exchange by adding clarity and transparency to the Exchange’s rules by eliminating references to entities that are not national securities exchanges without making a substantive change.

Similarly, the Exchange believes that the proposed use of the defined term “Member” in place of lists of categories of members and permit holders in the Limitation Provisions would simplify the provisions without substantive change, avoiding exchange-by-exchange descriptions

Securities Exchange Subsidiaries”); and Amended and Restated Certificate of Incorporation of Bats Global Markets Holdings, Inc., Art. Fifth, Sec. (2) (“Exchange Subsidiaries”).

of categories of members and permit holders, as each of the categories currently listed is a “member” of an exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act.³⁶ Such use of “Member,” along with the simplification of the definition of “Related Persons” in the Limitation Provisions, would add clarity and transparency to the Exchange’s rules as well as align the Limitation Provisions with the ICE Certificate voting and ownership concentration limits and with the voting and ownership concentration limits in the certificates of incorporation of other companies that own one or more national securities exchanges, which use a similar description of membership.³⁷

For similar reasons, the Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act³⁸ because the proposed rule change would be consistent with and 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.

Specifically, the proposed amendments (1) replacing references to the U.S. Regulated Subsidiaries, Regulated Subsidiaries, and to the NYSE, NYSE American, NYSE Arca, NYSE Arca, LLC and NYSE Arca Equities with references to an “Exchange” or the “Exchanges,” as appropriate; (2) using “Intermediate Holding Company” in place of lists of intermediate holding

³⁶ 15 U.S.C. 78c(a)(3)(A). Former NYSE Arca Equities ETP Holders are now ETP Holders of NYSE Arca. See 82 FR 40044, supra note 10, at 40044.

³⁷ See note 25, supra.

³⁸ 15 U.S.C. 78f(b)(5).

companies; (3) using “Member” in place of the lists of categories of members and permit holders in the Limitation Provisions; (4) simplifying the definition of “Related Persons” in the Limitation Provisions; (5) removing the ability of a U.S. Regulated Subsidiary to inspect the books and records of other U.S. Regulated Subsidiaries; and (6) making conforming changes to the Governing Documents, would remove impediments to and perfect the mechanism of a free and open market by simplifying and streamlining the Exchange’s rules and removing obsolete references, thereby 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 believes that the proposed amendments to the Governing Document provisions limiting claims against directors, officers and employees, as well as the relevant Intermediate Holding Company, 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 the proposed changes would conform the provision to the analogous statement in the ICE Certificate, as well as in the governing documents of other holding companies of national securities exchanges, which are substantially similar.³⁹

Finally, the Exchange believes that its proposed non-substantive amendment to Article V, Section A(3)(a) of the ICE Certificate would 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 because it would ensure that the ICE Certificate filed with the Commission conforms to the text approved by the ICE shareholders at the ICE annual meeting.

³⁹ See note 18, supra.

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 update and streamline the Intermediate Holding Company governing documents to make them more consistent with the governing documents of ICE, their ultimate parent, including by (a) streamlining references to ICE subsidiaries that either are or control national securities exchanges and deleting references to other ICE subsidiaries; and (b) amending the provisions regarding limitations on claims, voting and ownership concentration limitations, and confidential information.

The Exchange believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The proposed rule change would result in no concentration or other changes of ownership of exchanges.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁴⁰ and Rule 19b-4(f)(6) thereunder.⁴¹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it

⁴⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴¹ 17 CFR 240.19b-4(f)(6).

was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.⁴²

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁴³ of the Act to determine whether the proposed rule change 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2017-05 on the subject line.

⁴² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁴³ 15 U.S.C. 78s(b)(2)(B).

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-NYSE/NAT-2017-05. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSENAT-2017-05 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.⁴⁴

Eduardo A. Aleman
Assistant Secretary

⁴⁴ 17 CFR 200.30-3(a)(12).