

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-79901; File Nos. SR-NYSE-2016-90; SR-NYSEArca-2016-167; SR-NYSEMKT-2016-122)

January 30, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; Order Approving Proposed Rule Changes, Each as Modified by Amendment No. 1 Thereto, in Connection with the Proposed Acquisition of National Stock Exchange, Inc. by the NYSE Group, Inc.

I. Introduction

On December 16, 2016, the New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”), and NYSE MKT LLC (“NYSE MKT”) (collectively, the “Exchanges”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed rule changes in connection with the acquisition of National Stock Exchange, Inc. (“NSX”) by the Exchanges’ parent company, the NYSE Group, Inc. (“NYSE Group”). The proposed rule changes were published for comment in the Federal Register on December 28, 2016.<sup>3</sup> On January 23, 2017, the Exchanges each filed Amendment No. 1 to their respective proposed rule changes.<sup>4</sup> The Commission received no comment letters on the proposed rule changes. This order approves the proposed rule changes.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release Nos. 79671 (December 22, 2016), 81 FR 96128 (“NYSE Notice”); 79678 (December 22, 2016), 81 FR 96102 (May 16, 2016) (“NYSE Arca Notice”); and 79675 (December 22, 2016), 81 FR 96128 (May 16, 2016) (“NYSE MKT Notice”).

<sup>4</sup> In Amendment No. 1, the Exchanges updated an incorrect reference in the proposed amendment to the Sixth Amended and Restated Bylaws of the Intercontinental Exchange, Inc. Amendment No. 1 was technical in nature and therefore does not need to be published

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule changes are consistent with Sections 6(b)(1) and (3) of the Act,<sup>6</sup> which, among other things, require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission also finds that the proposals are consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

## II. Discussion

### A. Background

Currently, the Exchanges are wholly owned subsidiaries of NYSE Group. NYSE Group, in turn, is a wholly owned subsidiary of NYSE Holdings LLC (“NYSE Holdings”), which is

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for comment. See letters from Martha Redding, Associate General Counsel, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated January 23, 2017.

<sup>5</sup> In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(1) and (b)(3).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

wholly owned by Intercontinental Exchange Holdings, Inc. (“ICE Holdings”).<sup>8</sup> On December 14, 2016, ICE entered into an agreement with NSX, pursuant to which NYSE Group would acquire all of the outstanding capital stock of NSX (the “Acquisition”).<sup>9</sup> As a result of the Acquisition, NSX will be renamed NYSE National, Inc. (“NYSE National”) and will be operated as a wholly-owned subsidiary of NYSE Group.<sup>10</sup>

In order to consummate the Acquisition and reflect NYSE Group’s proposed ownership of NYSE National, the Exchanges propose to amend certain organizational documents of NYSE Group and its intermediary and ultimate parent entities. In particular, as described below, the Exchanges propose to amend the (1) Sixth Amended and Restated Bylaws of ICE (“ICE Bylaws”), (2) Seventh Amended and Restated Certificate of Incorporation of ICE Holdings (“ICE Holdings COI”), (3) Fourth Amended and Restated Bylaws of ICE Holdings (“ICE Holdings Bylaws”), (4) Independence Policy of the Board of Directors of ICE (“ICE Independence Policy”), (5) Seventh Amended and Restated Limited Liability Company Agreement of NYSE Holdings (“NYSE Holdings LLC Agreement”), (6) Fourth Amended and Restated Certificate of Incorporation of NYSE Group (“NYSE Group COI”), and (7) Second Amended and Restated Bylaws of NYSE Group (“NYSE Group Bylaws”).

The Exchanges represent that 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

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<sup>8</sup> Intercontinental Exchange, Inc. (“ICE”), a public company listed on the NYSE, owns 100% of ICE Holdings. See NYSE Notice, supra note 3 at 96124; NYSE Arca Notice, supra note 3, at 96102; and NYSE MKT Notice, supra note 3, at 96129.

<sup>9</sup> See id.

<sup>10</sup> See id.

to vote and own shares of ICE.<sup>11</sup> The Exchanges also represent that the proposed amendments are designed to provide similar protections to NYSE National as are currently provided to the Exchanges under those organizational documents.<sup>12</sup> Moreover, the Exchanges represent that the proposed changes to the organizational documents consist of technical and conforming amendments to reflect the proposed new ownership of NYSE National by the NYSE Group, and, indirectly, ICE.<sup>13</sup>

B. ICE Bylaws

The ICE Bylaws will be amended to reflect the Acquisition and incorporate NYSE National into the ICE Bylaws' existing (i) voting and ownership restrictions, (ii) provisions relating to the qualifications of directors and officers and their submission to jurisdiction, (iii) compliance with the federal securities laws, (iv) access to books and records, and (v) other matters related to ICE's control of its registered national securities exchanges. Specifically, the ICE Bylaws will be amended as follows:

- Update the heading to reflect that the bylaws will be the seventh amendment and restatement.
- Amend the definition of "U.S. Regulated Subsidiaries" in Article III (Directors), Section 3.15, which currently includes the NYSE, NYSE Market (DE), Inc. ("NYSE Market"), NYSE Regulation, Inc. ("NYSE Regulation"), NYSE Arca, LLC, NYSE Arca, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), and

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<sup>11</sup> See id.

<sup>12</sup> See id.

<sup>13</sup> See NYSE Notice, supra note 3 at 96124; NYSE Arca Notice, supra note 3, at 96102; and NYSE MKT Notice, supra note 3, at 96129.

NYSE MKT, to include NYSE National, and to delete obsolete references to NYSE Market and NYSE Regulation.<sup>14</sup>

- Article VIII (Confidential Information), Section 8.1, provides that, for so long as ICE controls any of the U.S. Regulated Subsidiaries, all confidential information that shall come into the possession of ICE pertaining to any of the U.S. Regulated Subsidiaries contained in the books and records of any of the U.S. Regulated Subsidiaries shall (x) not be made available to any persons (other than as provided in Sections 8.2 and 8.3 of the ICE Bylaws) other than to those officers, directors, employees and agents of ICE that have a reasonable need to know the contents thereof; (y) be retained in confidence by ICE and the officers, directors, employees and agents of ICE; and (z) not be used for any commercial purposes. Section 8.1 will be amended to include NYSE National and to delete the obsolete references to NYSE Market and NYSE Regulation.
- Article XI (Amendments to the Bylaws), 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.

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<sup>14</sup> According to the Exchanges, NYSE Market 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). See NYSE Notice, supra note 3 at 96124, n.7; NYSE Arca Notice, supra note 3, at 96103, n.7; and NYSE MKT Notice, supra note 3, at 96129, n.7. The Delegation Agreement was terminated when the NYSE re-integrated its regulatory and market functions and the two entities ceased being regulated subsidiaries. Id. NYSE Regulation has since been merged out of existence. Id.

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 will be amended to include NYSE National, and to delete the obsolete references to NYSE Market and NYSE Regulation.

The Exchanges also propose to add Article XII (Voting and Ownership Limitations) to the ICE Bylaws. Specifically, proposed Section 12.1(a) of Article XII will 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,<sup>15</sup> 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<sup>16</sup> nor any of its Related Persons<sup>17</sup> 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 (any such Person that is a Related Person of an ETP Holder shall hereinafter also be deemed to be an “ETP Holder” for purposes of these bylaws, as the context may require);

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<sup>15</sup> Section A.2(b) of Article V (Limitations on Voting and Ownership) of the certificate of incorporation of ICE relates to ICE board of directors approval of voting of ICE capital stock by a person together with its related persons in excess of “10%” [sic] of the then outstanding votes entitled to be cast.

<sup>16</sup> For the purpose of new Section 12.1, “Person” has the meaning assigned in the certificate of incorporation of ICE, as it shall be in effect from time to time.

<sup>17</sup> For the purpose of new Section 12.1, “Related Person” has the meaning assigned by the certificate of incorporation of ICE, as it shall be in effect from time to time.

- in the case of a resolution to approve entering into 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 (assuming that all shares of stock of ICE that are subject to such agreement, plan or other arrangement are not 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.

Proposed Section 12.1(b) will 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 the ICE's certificate of incorporation,<sup>18</sup> unless the board of directors of ICE shall have determined that neither such Person nor any of its Related Persons is an ETP Holder.

Proposed Section 12.2 will 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

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<sup>18</sup> Section B.2(b) of Article V (Limitations on Voting and Ownership) of the certificate of incorporation of ICE 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% of the then outstanding votes entitled to be cast.

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 Commission 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.

The Commission believes that the proposed changes to the ICE Bylaws are consistent with the requirements of Section 6(b) of the Exchange Act. The Commission also believes that the proposed provisions in the ICE Bylaws are reasonably designed to ensure that the Exchanges are able to carry out their self-regulatory obligations under the Exchange Act and thereby should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their respective regulatory oversight responsibilities under the Exchange Act. Furthermore, the Commission believes that it is appropriate to remove the obsolete references and add references to NYSE National in the ICE Bylaws so that the Bylaws will reflect the proposed ownership structure of NYSE National following the closing of the Acquisition.

C. ICE Holdings COI

The ICE Holdings COI will be amended as follows:

- Update the heading and paragraphs (2) – (5) to reflect that the certificate of incorporation will be the eighth amendment and restatement, including replacing



an incorrect reference to “Sixth” before “Amended” in paragraph (3). The date of the ICE Holdings COI will also be updated in the preamble.

- Amend subsection A.3(c)(ii) of Article V (Limitations on Voting and Ownership) to define an ETP Holder of NYSE Arca Equities as an “NYSE Arca Equities ETP Holder,” to distinguish between the ETP Holders of NYSE Arca Equities and those of NYSE National. The obsolete references to NYSE Market and NYSE Regulation will be deleted.
- Amend Subsection A.3(c) of Article V to add subsection (v), similar to those in place for the Exchanges, which will 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 defined in the bylaws of NYSE National, as such bylaws may be in effect from time to time) of NYSE National.
- Amend Subsection A.3(d) of Article V to add “NYSE Arca” before “ETP Holder” in one place to distinguish between the NYSE Arca Equities ETP Holders and those of NYSE National.
- Amend Subsection A.3(d) of Article V to add subsection (v) similar to those in place for the Exchanges. Proposed subsection (v) will incorporate NYSE National into an existing restriction, such that the board of directors of ICE Holdings will not be able to adopt 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.

- Amend Subsection B.3(d) of Article V to add “NYSE Arca” before “ETP Holder” to distinguish between the NYSE Arca Equities ETP Holders and those of NYSE National.
- Amend subsection B.3 of Article V to add subsection (g) similar to those in place for the Exchanges, incorporating NYSE National into the restriction on the ICE Holdings board of directors from adopting any resolution pursuant to clause (b) of Section B.2 of Article V of the ICE Holdings COI<sup>19</sup> 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.
- Amend Article X (Amendments) which provides that, for so long as ICE Holdings shall control, directly or indirectly, any of the U.S. Regulated Subsidiaries, before any amendment or repeal of any provision of the ICE Holdings COI shall be effective, the amendment or repeal must be submitted to the boards of directors of NYSE, NYSE Market, NYSE Regulation, NYSE Arca, NYSE Arca Equities, and NYSE MKT (or the boards of directors of their successors), to add the board of directors of NYSE National to the list of those exchanges that would receive any amendment or repeal of any provision of the ICE Holdings COI. The obsolete references to NYSE Market and NYSE Regulation will be deleted.

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<sup>19</sup> Section B.2(b) of Article V (Limitations on Voting and Ownership) of the ICE Holdings COI relates to ICE Holdings board of directors approval of ownership of ICE Holdings capital stock by a person together with its related persons in excess of 20% of the then outstanding votes entitled to be cast.

The Commission believes that the proposed changes to the ICE Holdings COI are consistent with the Exchange Act in that they are reasonably designed to facilitate the Exchanges' ability to fulfill their self-regulatory obligations under the Exchange Act. Additionally, the Commission believes that the proposed changes should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their respective regulatory oversight responsibilities under the Exchange Act. Furthermore, the Commission believes it is appropriate to replace outdated or obsolete references in the ICE Holdings COI following the closing of the Acquisition.

D. ICE Holdings Bylaws

The cover page and heading on the first page of the ICE Holdings Bylaws will be amended to reflect that the bylaws will be the fifth amendment and restatement. The effective date on the cover page will also be updated. Additionally, similar to the ICE Bylaws discussed above, the ICE Holdings Bylaws will be amended to include "NYSE National, Inc." in: (1) the definition of "U.S. Regulated Subsidiaries" in Article III (Directors), Section 3.15;<sup>20</sup> (2) Article VIII (Confidential Information), Section 8.1, which will be amended to extend the same protection to confidential information relating to the self-regulatory function of NYSE National or its successor;<sup>21</sup> and (3) Article XI (Amendment to the Bylaws), Section 11.3, which provides that, for so long as ICE Holdings controls any of the U.S. Regulated Subsidiaries, any amendment to or repeal of the ICE Holdings 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

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<sup>20</sup> Article VIII, Section 3.15 will also be amended to delete obsolete references to NYSE Market and NYSE Regulation.

<sup>21</sup> Article VIII, Section 8.1 will also be amended to delete obsolete references to NYSE Market and NYSE Regulation.

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 Holdings.<sup>22</sup>

The Commission believes that these proposed changes are consistent with the Exchange Act in that they are intended to align the Exchanges' upstream ownership governance documents with the proposed ownership structure of NYSE National following the closing of the Acquisition.

E. ICE Independence Policy

The ICE Independence Policy will be amended to add NYSE National to the section describing "Independence Qualifications." In particular, NYSE National will be added to categories 1.b. and c. that refer to "members," as defined in Section 3(a)(3)(A)(i)-(iv) of the Exchange Act.<sup>23</sup> The clause "and 'Person Associated with an ETP Holder' (as defined in Rule 1.5 of NYSE National, Inc.)" will also be added to category 1.b. Additionally, NYSE National will be added to subsections 4. and 5. of the "Independence Qualifications" section. Obsolete references to NYSE Market and NYSE Regulation will be deleted.<sup>24</sup>

The Commission believes that these changes should reduce confusion caused by obsolete references and align the Exchanges' upstream ownership governance documents with the proposed ownership structure of NYSE National following the closing of the Acquisition.

F. NYSE Holdings LLC Agreement

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<sup>22</sup> Article XI, Section 11.3 will also be amended to delete obsolete references to NYSE Market and NYSE Regulation.

<sup>23</sup> See 15 U.S.C. 78c(a)(3)(a).

<sup>24</sup> The Exchanges also propose to update the website link in footnote 2 to the NYSE Listed Company Manual and commentary.

The Exchanges propose to amend the NYSE Holdings LLC Agreement as follows:

- The heading and preamble will be amended to reflect that the LLC agreement will be the eighth amendment and restatement. The effective date will also be updated. In addition, a new clause will be added in the second full sentence that states the proposed amended NYSE Holdings LLC Agreement amends and restates the Seventh Amended and Restated Limited Liability Company Agreement, dated as of May 22, 2015.
- The current penultimate WHEREAS clause will be amended by adding “in May 2015” before “the Company” and the phrase “now desires to amend and restate” immediately following will be replaced with “amended and restated.” The words “have” and “are” will be changed to the past tense “had” and “were” in the final sentence.
- The following new WHEREAS clause will 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 will be deleted and new definitions of an “NYSE Arca ETP Holder” and “NYSE National ETP Holder” will be added to the definitions section. The Exchanges will also add a definition for “NYSE National.” The obsolete definition of NYSE Market will be deleted.

- Article IX (Voting and Ownership Limitations), Section 9.1(a)3.C will 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 obsolete reference to NYSE Market will be deleted from Section 9.1(a)3.C.
- Clause (v) will be added to Section 9.1(a)3.C. similar to those in place for the Exchanges. Clause (v) will incorporate NYSE National into the existing restriction, such that the NYSE Holdings board of directors will not be able to adopt 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 (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 will 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 NYSE Holdings LLC Agreement, as the context may require.
- Article IX (Voting and Ownership Limitations), Section 9.1(a)3.D will be amended to add “NYSE Arca” before “ETP Holder” in one place to distinguish between the NYSE Arca Equities ETP Holders and those of NYSE National. An outdated reference to NYSE Market will be deleted.
- Clause (v) will 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 will

not be able to adopt 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 will 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 will be amended to add subpart G. to incorporate NYSE National into the existing restriction on the NYSE Holdings Board of Directors, so that it will 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 Section 9.1(b)(2) of the NYSE Holdings LLC 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.

The Commission believes that the proposed changes to the NYSE Holdings LLC Agreement are consistent with the Exchange Act in that they are reasonably designed to facilitate the Exchanges’ ability to fulfill their self-regulatory obligations under the Exchange Act. Additionally, the Commission believes that the proposed changes should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their respective regulatory oversight responsibilities under the Exchange Act. Furthermore, the Commission believes that the replacement of outdated or

obsolete references may reduce confusion that could result from having these references in the NYSE Holdings LLC Agreement following the closing of the Acquisition.

G. NYSE Group COI

The Exchanges propose to amend the NYSE Group COI as follows:

- The heading and recitations will be amended to reflect that the certificate of incorporation will be the fifth amendment and restatement.
- NYSE National will be added to the list of “Regulated Subsidiaries” in Article IV (Stock), Section 4(b)(1), and the obsolete references to NYSE Market and NYSE Regulation will be deleted.
- Section 4(b)(1)(y) of Article IV (Stock) will be amended to define an ETP Holder of NYSE Arca Equities as an “NYSE Arca Equities ETP Holder,” to distinguish between the ETP Holders of NYSE Arca Equities and those of NYSE National, An outdated reference to NYSE Market will be deleted.
- Section 4(b)(1)(y) will also be amended to add a provision similar to those in place for the 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 NYSE Group COI, as the context may require.



- Section 4(b)(1)(z) of Article IV will 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. Section 4(b)(1)(z) will also be amended to incorporate NYSE National into the existing restriction on the NYSE Group Board of Directors, such that it will not be able to adopt 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.
- Section 4(b)(1)(z)(iv) of Article IV will be amended to add “NYSE Arca” before “ETP Holder” to distinguish between the NYSE Arca Equities ETP Holders and those of NYSE National.
- Subpart (vii) will be added to Section 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 will not be able to adopt 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.<sup>25</sup>
- Article X (Confidential Information) will 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 and NYSE Regulation.

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<sup>25</sup> An obsolete reference to NYSE Market will be deleted from Article IV (Stock), Section 4(b)(2)(C)(v).

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 NYSE Group COI shall be effective, such amendment or repeal shall either (a) be filed with or filed with and approved by the Commission 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, NYSE Regulation, NYSE Arca, NYSE Arca Equities, and NYSE MKT or the boards of directors of their successors. Article XII will be amended to add NYSE National to subsection (b) and delete obsolete references to NYSE Market and NYSE Regulation.

The Commission believes that the proposed changes to the NYSE Group COI are consistent with the Exchange Act in that they are reasonably designed to facilitate the Exchanges' ability to fulfill their self-regulatory obligations under the Exchange Act. Additionally, the Commission believes that the proposed changes should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their respective regulatory oversight responsibilities under the Exchange Act. Furthermore, the Commission believes that the replacement of outdated or obsolete references will reduce confusion that might result from having these references in the NYSE Group COI following the closing of the Acquisition.

#### H. NYSE Group Bylaws

The heading of the NYSE Group Bylaws will be amended to reflect that the bylaws will be the third amendment and restatement. Additionally, Article VII (Miscellaneous), Section 7.9(A)(b) will be amended to (1) delete obsolete references to NYSE Market and NYSE Regulation, (2) replace the outdated reference to "NYSE Alternext US LLC" with "NYSE MKT

LLC,” and (3) add NYSE National to the list of those exchanges that would receive any amendment or repeal of any provision of the NYSE Group Bylaws.<sup>26</sup>

The Commission believes that the proposed changes to the NYSE Group Bylaws are consistent with the Exchange Act in that they are intended to eliminate confusion that may result from having outdated or obsolete references and reflect the proposed new ownership of NYSE National by the NYSE Group.

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<sup>26</sup> Article VII (Miscellaneous), Section 7.9(A)(b) currently provides that, for so long as NYSE Group controls, directly or indirectly, any of the Exchanges, before any amendment or repeal of any provision of the NYSE Group Bylaws shall be effective, such amendment or repeal 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, 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 NYSE Group.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>27</sup> that the proposed rule changes (SR-NYSE-2016-90; SR-NYSEArca-2016-167; and SR-NYSEMKT-2016-122), as modified by their respective Amendment No. 1, be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>27</sup> 15 U.S.C. 78f(b)(2).

<sup>28</sup> 17 CFR 200.30-3(a)(12).