SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; New York Stock Exchange LLC; 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.

November 15, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or “Exchange Act”) and Rule 19b–4 thereunder, notice is hereby given that on November 2, 2017, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend 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 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 Rostated Bylaws of ICE ("ICE Bylaws").

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, NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American") and NYSE National, Inc. ("NYSE National").

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." "Exchange" is defined as a national securities exchange registered under Section 6 of the Exchange Act that is directly or indirectly controlled by ICE. 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.

As a result of the proposed change, the Governing Documents 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.

The Exchange accordingly proposes the following changes:

- In the ICE Holdings Certificate, the definitions of "U.S. Registered Subsidiary" and "U.S. Registered 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 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."


"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

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

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

The additional references to NYSE Holdings or NYSE Group would be replaced with the terms “Intermediate Holding Company” and “Intermediate Holding Companies,” as applicable.

- 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 Company” or “Intermediate Holding Companies,” 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. 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.

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):

- 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 italicized):

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 italicized):

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”). 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. The Exchange proposes to amend the Limitation 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. Consistent with the ICE Certificate, the Exchange proposes to replace such provisions with the defined term “Member,” or, in the case of the NYSE Holdings 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.

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.

The Exchange believes that the use of “Member” and the changes to remove the descriptions of categories of members and permit holders described above 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.

16 In the ICE Holdings Certificate, the word “respective” also would be deleted.
17 See ICE Holdings Bylaws, Art. III, Sec. 3.14; NYSE Holdings Certificate, 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.
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 Holdings 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 (8); and NYSE Group Certificate, Art. IV, Sec. 4(b)(1)(A)(i).
22 See ICE Certificate, Art. V, Sec. A(3)(c) and (B).
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.
25 See Second Amended and Restated Certificate of Incorporation of CBOE Holdings, Inc. (“CBOE Certificate”), Art. Sixth, Sec. (a)(iii)(C) and (b)(ii)(D)
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). 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.”

• In the ICE Group Certificate, Article V, 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, 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).

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

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

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 3.12 30 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.

Additional Proposed Changes to the 
Governance 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.

2. Statutory Basis

The Exchange believes that the 
proposed rule change is consistent with 
Section 6(b) of the Exchange Act 32 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, 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 
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 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 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 

30 NYSE Arca Rule 3.12 provides, among other 

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33 See Intercontinental Exchange, Inc. Notice of 
2017 Annual Meeting and Proxy Statement, at page 
A–5, available at https://ir.theice.com/-/media/ 
Files/Ice-III/quarterly-results/2016/proxy- 
statement-2016.pdf.


35 See CBOE Certificate, Art. Fifth, Sec. (a)(v), and 
Art. Sixth, Sec. (a)(i)(A) (“Regulated Securities 
Exchange Subsidiaries”); and Amended and 
Restated Certificate of Incorporation of Bats Global 
Markets Holdings, Inc., Art. Fifth, Sec. (2) 
(“Exchange Subsidiaries”).
Exchange Act. 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.

For similar reasons, the Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act 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 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.

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, 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.

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 Act and Rule 19b-4(f)(6) thereunder. 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 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. 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) 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

37 See note 25, supra.

41 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.
SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 902.06 of the NYSE Listed Company Manual

November 15, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),1 and Rule 19b–4 thereunder,2 the Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange proposes to amend Section 902.06 of the NYSE Listed Company Manual (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.06 of the NYSE Listed Company Manual (the “Manual”). The proposed rule change is available on the Exchange’s Web site 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

On October 11, 2017, the Securities and Exchange Commission (the “Commission”) approved the Exchange’s proposed rule change to adopt initial and continued listing standards for subscription receipts.3 After approval, it was discovered that the proposed rule text attached as Exhibit 5 to the Exchange’s Rule 19b–4 filing contained an error to the part of the filing amending the listing fees in Section 902.06. The Exchange proposes to correct the inadvertent error.

In connection with adopting initial and continued listing standards for subscription receipts, the Exchange amended Section 902.06 of the Manual to specify how listing fees for subscription receipts would be charged. Section 902.06 of the Manual sets forth listing fees for “short-term” securities, i.e., securities with a life of seven years or less. Because subscription receipts listed under Section 102.08 of the Manual have a maximum life of 12 months, the Exchange stated in the Purpose Section of its proposed rule change that it would amend Section 902.06 to make explicit that such section would apply to subscription receipts. However, in drafting the proposed rule text contained in Exhibit 5 to its Rule 19b–4 filing, the Exchange inadvertently included subscription receipts in a list of securities to which Section 902.06 of the Manual does not apply. The Exchange now proposes to amend Section 902.06 to correct the error in the actual rule text that was adopted to make clear that Section 902.06 does apply to subscription receipts.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,4 in general, and furthers the objectives of Sections 6(b)(5) of the Act, in particular, that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the protection of investors because it seeks to amend the Manual to accurately reflect how the Exchange intends to charge listing fees for subscription receipts as stated in the description of

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Eduardo A. Aleman, Assistant Secretary.