



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83344; File No. SR-NYSENAT-2018-06]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Intercontinental Exchange, Inc. Director Independence Policy

May 30, 2018

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 22, 2018, 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 amend the Intercontinental Exchange, Inc. director independence policy in connection with a transaction whereby Chicago Stock Exchange, Inc. and its direct parent, CHX Holdings, Inc., would become indirect subsidiaries of Intercontinental Exchange, Inc., the ultimate parent of the Exchange. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Independence Policy in connection with the Transaction. CHX Holdings,⁴ ICE and Kondor Merger Sub, Inc. (“Merger Sub”), entered into a Merger Agreement dated April 4, 2018 (“Merger Agreement”). Merger Sub is a wholly-owned subsidiary of NYSE Group, Inc. (“NYSE Group”). Pursuant to the Merger Agreement, Merger Sub would merge with and into CHX Holdings, with CHX Holdings continuing as the surviving corporation (“Merger”). Upon the Merger, NYSE Group would hold all of the outstanding and issued shares of CHX Holdings, and CHX Holdings would continue to be the record and beneficial owner of all of the issued and outstanding shares of capital stock of CHX and the sole member of CHXBD, LLC (“CHXBD”), the Exchange’s affiliated routing broker.

⁴ CHX became a wholly-owned subsidiary of CHX Holdings pursuant to the Exchange’s demutualization as approved by the Commission in February 2005. See Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR-CHX-2004-26).

NYSE Group owns all of the equity interest in 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”). In turn, NYSE Group is a wholly-owned subsidiary of NYSE Holdings LLC, which is wholly owned by Intercontinental Exchange Holdings, Inc. (“ICE Holdings”). ICE Holdings is wholly owned by ICE.⁵

Following the Transaction, CHX would continue to be registered as a national securities exchange and as a separate self-regulatory organization. As such, CHX would continue to have separate rules, membership rosters, and listings that would be distinct from the rules, membership rosters, and listings of the four registered national securities exchanges and self-regulatory organizations owned by NYSE Group, namely, the NYSE, NYSE American, NYSE Arca, and NYSE National (together, the “NYSE Exchanges”).

The proposed rule changes would become operative simultaneously with the Merger that effectuates the Transaction (“Closing”).

Amendments to the Independence Policy

The Independence Policy was adopted at the time that the Exchange’s national securities exchange affiliates were acquired by ICE⁶ and amended to reflect the NYSE Group acquisition of the Exchange.⁷ In connection with the Transaction, the

⁵ ICE is a publicly traded company listed on the NYSE.

⁶ See Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758, 511764-511765 [sic] (August 21, 2013) (SR-NYSE-2013-42; SR-NYSEMKT-2013-50; SR-NYSEArca-2013-62). At the time of the acquisition, “ICE” was called “IntercontinentalExchange Group, Inc.” See Securities Exchange Act Release No. 72158 (May 13, 2014), 79 FR 28784 (May 19, 2014) (SR-NYSE-2014-23).

⁷ See Securities Exchange Act Releases No. 79901 (January 30, 2017), 82 FR 9251

Independence Policy would be amended to provide similar protections to CHX as are currently provided to the NYSE Exchanges by the policy, by making technical and conforming amendments.⁸ In addition, the Exchange proposes to remove or update obsolete references.

The proposed amendments are as follows:

- Under “Independence Qualifications,” references to the CHX would be added to categories (1)(b) and (c) that refer to “members,” as defined in section 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act.⁹ References to the CHX would also be added to subsections (4) and (5) of the section. As CHX does not have terms equivalent to “allied members” or “approved persons,” the Exchange does not propose to add references to CHX to the clause following “(collectively, ‘Members’)” in category (1)(b) or to category 2.
- The NYSE no longer has allied members.¹⁰ Accordingly, the Exchange proposes to delete the text “as defined in paragraph (c) of Rule 2 of the

(February 3, 2017) (SR-NYSE-2016-90; SR-NYSEArca-2016-167; SR-NYSEMKT-2016-122), and 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16).

⁸ The Exchange’s affiliates NYSE, NYSE American, and NYSE Arca have each submitted substantially the same proposed rule change to the Independence Policy as described herein. See SR-NYSE-2018-19, SR-NYSEAmer-2018-17, and SR-NYSEArca-2018-27.

⁹ See 15 U.S.C. 78c(a)(3)(a).

¹⁰ See Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR-NYSE-2008-80) (notice of filing and immediate effectiveness of proposed rule change and Amendment No. 1 thereto conforming certain NYSE rules to changes to NYSE incorporated rules recently filed by the Financial Industry Regulatory Authority, Inc.).

New York Stock Exchange LLC and” from category 1(b) of “Independence Qualifications.”

- NYSE MKT LLC changed its name to NYSE American LLC.¹¹ Under “Independence Qualifications” and “Member Organizations,” references to NYSE MKT LLC would be updated to reflect its name change.
- NYSE Arca Equities, Inc. merged with NYSE Arca, Inc., and therefore no longer exists.¹² Accordingly, under “Independence Qualifications,” the text “and Rule 1.1(c) of NYSE Arca Equities, Inc.” in category 1(b) and references to NYSE Arca Equities, Inc. in categories 2 and 5 would be deleted.

Conforming changes would also be made to delete and replace connectors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act¹³ in general, and with Section 6(b)(1)¹⁴ 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.

¹¹ See Securities Exchange Act Release No. 80283 (March 21, 2017), 82 FR 15244 (March 27, 2017) (SR-NYSEMKT-2017-14).

¹² See Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(1).

The Exchange believes that amending the ICE Independence Policy 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 by incorporating CHX in the text of the Independence Policy and by removing or updating obsolete or outdated references, thereby adding clarity and transparency to the Exchange Rules by removing any confusion that may result if the Transaction was not reflected in the Independence Policy, or if it retained obsolete or outdated references to NYSE allied members, NYSE MKT LLC or NYSE Arca Equities, Inc. The proposed changes would allow persons subject to the Exchange's jurisdiction, regulators, and investors to more easily navigate and understand the Independence Policy, contributing to the orderly operation of the Exchange,

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ in that it 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 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 amendments to the Independence Policy would remove impediments to and perfect the mechanism of a free and open market and a national market system by removing confusion that may result if the Transaction was not reflected in the Independence Policy, or if it retained obsolete or outdated references

¹⁵ 15 U.S.C. 78f(b)(5).

to NYSE allied members, NYSE MKT LLC or NYSE Arca Equities, Inc., thereby ensuring that market participants can more easily navigate, understand and comply with the Exchange rules. In this manner, the proposed change would ensure that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Independence Policy. The Exchange further believes that eliminating obsolete or outdated references would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such obsolete references will also further the goal of transparency and add clarity to the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Independence Policy to reflect the Transaction and to remove obsolete references.

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

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

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

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 for 30 days from the date on which it was filed, or such shorter time as

the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁸ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange to immediately update the Independence Policy to reflect the Transaction and to remove obsolete references. The Commission does not believe that any new or novel issues are raised by the proposal. For these reasons, the Commission believes that the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) requires the Exchange to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of 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 fulfilled this requirement.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-2018-06 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSENAT-2018-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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-2018-06 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Eduardo A. Aleman,
Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).

[FR Doc. 2018-11981 Filed: 6/4/2018 8:45 am; Publication Date: 6/5/2018]