

provide ATP Holders<sup>12</sup> and investors with additional opportunities to trade customized options in an exchange environment.

#### *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 Act.

#### *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<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> Because the foregoing rule 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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,<sup>15</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

Under Rule 19b-4(f)(6) of the Act,<sup>18</sup> a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative date. The Exchange believes that waiver of the 30-day operative date will: (i) Permit the Exchange to offer investors additional opportunities to trade

customized options in response to recent member requests; and (ii) level the current competitive landscape by permitting the Exchange to implement changes similar to those recently implemented by another self-regulatory organization. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and thus designates the proposal as operative upon filing.<sup>19</sup> The Commission notes that the Exchange's proposal is based on a similar proposed rule change adopted by the Chicago Board Options Exchange.<sup>20</sup> That proposal was subject to full notice and comment and no comments were received. Based on this, the Commission believes that it is appropriate to designate the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMEX-2009-44 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMEX-2009-44. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMEX-2009-44 and should be submitted on or before September 16, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60542; File No. SR-NYSE-2009-60]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change in Connection With the Proposal of NYSE Euronext To Require That at Least Three-Fourths of Its Directors Satisfy Independence Requirements**

August 19, 2009.

#### **I. Introduction**

On June 23, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant

<sup>12</sup> See NYSE Amex Rule 900.2NY(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> The Exchange has fulfilled this five day requirement.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> *Id.*

<sup>19</sup> For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also 17 CFR 200.30-3(a)(59).

<sup>20</sup> Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR-CBOE-2008-115).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend the Bylaws of its ultimate parent, NYSE Euronext ("Corporation"),<sup>4</sup> and the Corporation's Director Independence Policy to require that at least three-fourths of the members of the Corporation's Board of Directors ("Board") satisfy independence requirements. The proposed rule change was published for comment in the **Federal Register** on July 16, 2009.<sup>5</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

Section 10.10(C) of the Corporation's Bylaws provides, among other things, that for so long as the Corporation shall control, directly or indirectly, any U.S. Regulated Subsidiaries,<sup>6</sup> before any amendment or repeal of any provision of the Bylaws shall be effective, such amendment or repeal shall be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder. Consistent with this requirement, NYSE filed this proposed rule change. Currently, the Corporation's Bylaws and Director Independence Policy require that all members of the Board, other than the Chief Executive Officer and the Deputy Chief Executive Officer, must satisfy the independence requirements for directors of the Corporation.<sup>7</sup> The proposed rule change would permit the Corporation to amend its Bylaws and Director Independence Policy to require that at least three-fourths of the members of the Board satisfy the independence requirements for directors of the Corporation.

The Exchange stated that the proposed amendment to the Bylaws and Director Independence Policy would not alter or amend the standards by which the Corporation determines whether an individual director is independent; would not affect the independence

requirements of the Exchange with respect to its directors or the director independence requirements of any of the other self-regulatory organizations for which the Corporation is the ultimate parent or of NYSE Group, Inc., the intermediate holding company, including in each case the number of required independent directors; and would not affect other director qualification requirements set forth in the Bylaws of the Corporation.<sup>8</sup>

The Exchange further stated that the current board independence requirement eliminates from consideration as potential directors of the Corporation a substantial number of individuals who could contribute significantly to the deliberations of the Corporation's Board by virtue of their knowledge, ability, and experience. The Exchange believes that the proposed rule change would continue to protect the independent judgment of the Board, while permitting the Corporation to consider a broader range of experienced and knowledgeable individuals as directors.<sup>9</sup>

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>10</sup> which requires, among other things, that an exchange be so organized and have the capacity to be able to carry out the purposes of the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.<sup>12</sup>

<sup>8</sup> See e.g., Section 3.2 of the Bylaws (Certain Qualifications for the Board of Directors).

<sup>9</sup> There are currently 18 directors on the Board, including the Chief Executive Officer and the Deputy Chief Executive Officer. The Bylaws currently require 16 of the directors (*i.e.*, all but the two aforementioned employees) to be independent. The proposed amendment to the Bylaws would require a minimum of 14 of the directors to be independent.

<sup>10</sup> 15 U.S.C. 78f(b)(1).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

The Bylaws currently require that 16 of the 18 directors of the Corporation's Board (all the directors except the Chief Executive Officer and the Deputy Chief Executive Officer) must satisfy the Corporation's independence requirements. The Commission notes that the proposed rule change, which would require that at least three-fourths of the Board to be independent, would still require a minimum of 14 directors to satisfy the Corporation's independence requirements. The Commission also notes that the proposal would not alter the Corporation's standards for determining director independence. The Commission believes that the proposal strikes a reasonable balance between the goals of retaining highly qualified and experienced directors for Board service and protecting the exercise of independent judgment by the Corporation's Board.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSE-2009-60) be, and hereby is, approved.

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

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60537; File No. SR-ISE-2009-63]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

August 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 7, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The NYSE, a New York limited liability company, is an indirect wholly-owned subsidiary of NYSE Euronext.

<sup>5</sup> See Securities Exchange Act Release No. 60261 (July 8, 2009), 74 FR 34609 ("Notice").

<sup>6</sup> Section 7.3(G) of the Corporation's Bylaws defines "U.S. Regulated Subsidiaries" as New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc. and NYSE Alternext US LLC or their successors, in each case to the extent that such entities continue to be controlled, directly or indirectly, by the Corporation.

<sup>7</sup> See Section 3.4 of the Amended and Restated Bylaws of NYSE Euronext ("Bylaws").