

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are consistent with the Exchange Act in that they are intended to eliminate confusion that may result from having outdated or obsolete references and reflect the proposed new ownership of NYSE National by the NYSE Group.

### 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79895; File No. SR–NYSEMKT–2017–03]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rules 900.3NY, Rule 961NY, Make a Conforming Change to Rule 935NY, and Eliminate Section 910–AEMI of the AEMI Rules, and Sections 910 and 910–AEMI of the NYSE MKT Company Guide

January 30, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that on January 18, 2017, NYSE MKT LLC (“Exchange”

or “NYSE MKT”) 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 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 Rule 900.3NY to eliminate Price Improving Orders and Quotes, amend Rule 961NY to eliminate the electronic and open outcry bidding and offering requirements associated with a Price Improving Order or Quote, and make a conforming change to Rule 935NY, and (2) eliminate Section 910–AEMI of the AEMI Rules, and Sections 910 and 910–AEMI of the NYSE MKT Company Guide. The proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

##### 1. Purpose

The Exchange proposes to (1) amend Rule 900.3NY to eliminate Price Improving Orders and Quotes, amend Rule 961NY to eliminate the electronic and open outcry bidding and offering requirements associated with a Price Improving Order or Quote, and make a conforming change to Rule 935NY, and (2) eliminate Section 910–AEMI of the AEMI Rules, and Sections 910 and 910–AEMI of the NYSE MKT Company Guide. The Exchange proposes to eliminate these order types in order to streamline its rules and reduce complexity among its order type

offerings, and to delete obsolete and outdated rules.<sup>4</sup>

#### Elimination of Price Improving Orders and Quotes

The Exchange proposes to eliminate, and thus delete from its rules, Price Improving Orders and Quotes, as defined in Rule 900.3NY(r).

A Price Improving Order or Price Improving Quote is an order or quote to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders and Quotes may be entered in increments as small as one cent. Because the Exchange has not implemented this functionality, the Exchange believes it is appropriate to delete the functionality from its rules.<sup>5</sup>

To reflect this elimination, the Exchange proposes to delete all references to Price Improving Orders and Quotes in Rule 900.3NY(r), and to the electronic and open outcry bidding and offering requirements associated with a Price Improving Order or Quote in the second introductory paragraph of Rule 961NY and in Rules 961NY(a), 961NY(b) and 961NY(c), and to delete in the Commentary to Rule 935NY a reference to Rule 900.3NY(r),<sup>6</sup> as follows:

- Delete Rule 900.3NY(r), which defines Price Improving Orders and Quotes;
- delete the second introductory paragraph of Rule 961NY, which describes which options may be

<sup>4</sup> See e.g., Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler O’Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available at [www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5Hl-fmw/jiw](http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5Hl-fmw/jiw)) (“I am asking the exchanges to conduct a comprehensive review of their order types and how they operate in practice. As part of this review, I expect that the exchanges will consider appropriate rule changes to help clarify the nature of their order types and how they interact with each other, and how they support fair, orderly, and efficient markets.” *Id.*).

<sup>5</sup> Though originally adopted as a competitive response to another options market introducing price improving orders, the Exchange never implemented this functionality for a variety of reasons, including technology and because most options volume was concentrated in Penny Pilot issues where price improving orders would be of little or no value.

<sup>6</sup> See Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR–NYSEALTR–2008–14) (order granting accelerated approval of proposed rule change establishing rules for the trading of listed options including order exposure requirements in connection with Price Improving Orders and Quotes, designation of options eligible for Penny Price Improvement, the manner of bidding or offering in open outcry for Penny Pricing, and the required “sweep” of any Penny Pricing interest in the System).

<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.

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

<sup>28</sup> 17 CFR 200.30–3(a)(12).

<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.

designated for penny price improvement;<sup>7</sup>

- delete Rule 961NY(a), which describes the electronic submission process in connection with a Price Improving Order or Quote;<sup>8</sup>
- delete Rule 961NY(b), which describes the open outcry submission process in connection with a Price Improving Order or Quote;<sup>9</sup>
- delete Rule 961NY(c), which describes the requirement to electronically “sweep” any penny pricing interest in the Exchange’s System;<sup>10</sup> and
- delete in the Commentary to Rule 935NY a reference to Rule 900.3NY(r).

Elimination of Obsolete and Out Dated Section 910—AEMI of the AEMI Rules and Sections 910 and 910—AEMI of the NYSE MKT Company Guide

The Exchange also proposes to eliminate, and thus delete one section from its rulebook and two sections from the Company Guide, governing the same topic, that are now obsolete and outdated:

- Delete Section 910—AEMI. Amex Company Guide RELATIONSHIP WITH SPECIALIST (§ 910—AEMI) PROCEDURES, RULES AND REGULATIONS, of the AEMI Rules;
- delete Section 910. PROCEDURES, RULES AND REGULATIONS, of the NYSE MKT Company Guide; and
- delete Section 910—AEMI. PROCEDURES, RULES AND REGULATIONS, of the NYSE MKT Company Guide.

The Exchange has identified these obsolete and outdated rules and proposes to delete both the section in the rulebook and the corresponding sections in the Company Guide. These rules relate to trading systems that have been decommissioned by the Exchange and rules governing Specialists’ obligations, conduct, and activities, including dealings and communications, which were superseded by later-implemented rules governing the same conduct or circumstances. The Commission has previously approved the Exchange’s new Equity Rules that superseded the AEMI rules.<sup>11</sup> Specifically, pursuant to Rule 0(b) and Rule 0—Equities, the Equities Rules govern all transactions

conducted on the Exchange’s Equities Trading Systems.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>12</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>13</sup> in particular, 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Specifically, the Exchange believes that eliminating Price Improving Orders and Quotes would remove impediments to and perfect a national market system by simplifying the functionality and complexity of its order types. The Exchange believes that eliminating these order types would be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the removal of complex functionality. The Exchange also believes that eliminating Price Improving Orders and Quotes would benefit investors and add transparency and clarity to the Exchange’s rules because the functionality of those order types was not implemented and therefore is not available.

The Exchange further believes that deleting corresponding references in Exchange rules to deleted order types, and the associated bidding and offering process in connection with a deleted order type, also removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange’s rulebook and better understand the order types available for trading on the Exchange. Removing obsolete cross references also furthers the goal of transparency and adds clarity to the Exchange’s rules.

The Exchange further believes that by deleting obsolete and outdated rules, it also promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, helps to protect investors and the public interest by providing transparency as to which rules are operable and reducing potential confusion that may result from having

obsolete or outdated rules in the Exchange’s rulebook. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate and understand the Exchange’s rulebook.

## 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. The proposed change is not designed to address any competitive issue but would rather remove complex functionality, references to functionality that is not available, and obsolete and outdated rules, thereby reducing confusion and making the Exchange’s rules easier to understand and navigate.

## 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>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> 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)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63) (order approving proposed rule change to establish new membership, member firm conduct, and equity trading rules following the acquisition of the Exchange).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

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)<sup>18</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2017-03 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSEMKT-2017-03. This file number should be included on the subject line if email 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 Web site 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;

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-NYSEMKT-2017-03 and should be submitted on or before February 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79902; File No. SR-NSX-2016-16]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, in Connection With a Proposed Acquisition of the Exchange by NYSE Group, Inc.

January 30, 2017.

#### I. Introduction

On December 22, 2016, National Stock Exchange, Inc. ("NSX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to make certain amendments to its corporate governance documents and rules, and the corporate governance documents of NYSE Group, Inc. ("NYSE Group"), NYSE Holdings LLC ("NYSE Holdings"), Intercontinental Exchange Holdings, Inc. ("ICE Holdings"), and Intercontinental Exchange, Inc. ("ICE") in order to effectuate a proposed transaction (the "Transaction") in which the Exchange will become a wholly-owned subsidiary of NYSE Group. The proposed rule change was published for comment in the **Federal Register** on December 30, 2016.<sup>4</sup> On January 23, 2017, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission

received no comments on the proposal. This order approves the proposal, as modified by Amendment No. 1.

#### II. Description of the Proposal

On December 14, 2016, ICE entered into an agreement with the Exchange pursuant to which its wholly-owned subsidiary, NYSE Group, will acquire all of the outstanding capital stock of the Exchange (the "Acquisition"). As a result of the Acquisition, the Exchange will be renamed NYSE National, Inc. ("NYSE National") and will be operated as a wholly-owned subsidiary of NYSE Group. NYSE Group is a wholly-owned subsidiary of NYSE Holdings, which is in turn 100% owned by ICE Holdings. ICE is a public company listed on the New York Stock Exchange LLC (the "NYSE"), and owns 100% of ICE Holdings.<sup>6</sup> Following the Acquisition, the Exchange will continue to be registered as a national securities exchange.<sup>7</sup> According to the Exchange, as it does today, the Exchange will continue to have separate rules, membership rosters, and listings that will be distinct from the rules, membership rosters, and listings of the three other registered national securities exchanges owned by NYSE Group, namely, the NYSE, NYSE MKT LLC ("NYSE MKT"), and NYSE Arca, Inc. ("NYSE Arca") (together, the "NYSE Exchanges").<sup>8</sup>

In connection with the Acquisition, the Exchange proposes to amend its Certificate of Incorporation and Third Amended and Restated Bylaws. In addition, the Exchange proposes to amend certain corporate governance documents of NYSE Group, NYSE Holdings, ICE Holdings and ICE,<sup>9</sup> such that the conditions in those documents are equally applicable to the NYSE NSX.<sup>10</sup> According to the Exchange, the

and Restated Bylaws of ICE. Specifically, the Exchange replaced a reference in Section 12.1(a)(1) of Article XII of the ICE Bylaws to "the Amended and Restated Certificate of Incorporation of the Corporation" with a reference to "these bylaws." Amendment No. 1 was technical in nature and therefore does not need to be published for comment.

<sup>6</sup> See Notice, *supra* note 4, at 96552.

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> The NYSE Exchanges filed proposed rule changes, which propose similar amendments to their respective governance documents. See Securities Exchange Act Release Nos. 79671 (December 22, 2016), 81 FR 96128 (SR-NYSE-2016-90); 79678 (December 22, 2016), 81 FR 96102 (May 16, 2016) (SR-NYSEArca-2016-167); and 79675 (December 22, 2016), 81 FR 96128 (May 16, 2016) (SR-NYSEMKT-2016-122).

<sup>10</sup> See Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (approving rule changes related to NYSE Euronext becoming a wholly owned subsidiary of ICE (then called IntercontinentalExchange Group, Inc.)).

<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<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> See Securities Exchange Act Release No. 79684 (December 23, 2016), 81 FR 96552 (SR-NSX-2016-16) ("Notice").

<sup>5</sup> In Amendment No. 1, the Exchange corrected a technical error in the proposed Seventh Amended