SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73740; File Nos. SR–NYSE–2014–53; SR–NYSEMKT–2014–83; SR–NYSEArca–2014–112]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, in Connection With the Proposed Termination of the Amended and Restated Trust Agreement, Dated as of November 13, 2013 and Amended on June 2, 2014 By and Among NYSE Holdings LLC, a Delaware Limited Liability Company, NYSE Group, Inc., a Delaware Corporation, Wilmington Trust Company, as Delaware Trustee, and Each of Jacques de Larosière de Champfeu, Alan Trager and John Shepard Reed, as Trustees

December 4, 2014.

I. Introduction

On October 8, 2014, each of New York Stock Exchange LLC (''Exchange''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca'' and, with the Exchange and NYSE MKT, the ''NYSE Exchanges''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule changes in connection with the proposed termination of the Amended and Restated Trust Agreement, dated as of November 13, 2013 and amended on June 2, 2014 (the ''Trust Agreement''), by and among NYSE Holdings LLC, a Delaware limited liability company (''NYSE Holdings''), NYSE Group, Inc., a Delaware corporation (''NYSE Group''), Wilmington Trust Company, as Delaware Trustee, and each of Jacques de Larosière de Champfeu, Alan Trager and John Shepard Reed, as Trustees. The proposed rule changes were published for comment in the **Federal Register** on October 22, 2014.[3] The Commission did not receive any comment letters on the proposal. On October 21, 2014, the NYSE Exchanges filed Amendment No. 1 to the proposed rule changes.[4] This order approves the proposed rule changes as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The NYSE Exchanges seek approval for their 100% direct parent, NYSE Group, and its 100% indirect parent, NYSE Holdings, to terminate the Trust Agreement.[5] The NYSE Exchanges believe that the regulatory considerations that led to the implementation of the Trust Agreement in 2007 are now moot as a result of the sale by Intercontinental Exchange, Inc., a Delaware corporation (''ICE''), of Euronext N.V. (''Euronext'') in June 2014 and certain changes in the corporate governance of ICE, ICE Holdings and NYSE Holdings that occurred upon such sale.

In 2007, NYSE Group, which is the 100% owner of the NYSE Exchanges, combined with Euronext (the ''Combination''). The new parent company formed in the Combination, NYSE Euronext, operated several regulated entities in the United States and various jurisdictions in Europe. In the Commission's notice relating to the proposed Combination, the NYSE Exchanges emphasized the importance of continuing to regulate marketplaces locally:

> A core aspect of the structure of the Combination is continued local regulation of the marketplaces. Accordingly, the Combination is premised on the notion that . . . [c]ompanies listing their securities only on markets operated by Euronext and its subsidiaries will not become newly subject to U.S. laws or regulation by the SEC as a result of the Combination, and companies listing their securities only on the Exchange or NYSE Arca, will not become newly subject to European rules or regulation as a result of the Combination.[6]

In connection with obtaining regulatory approval of the Combination, NYSE Euronext implemented certain special arrangements consisting of two standby structures, one involving a Dutch foundation (Stichting) and one involving a Delaware trust. The Dutch foundation was empowered to take actions to mitigate the effects of any material adverse change in U.S. law that had an ''extraterritorial'' impact on non-U.S. issuers listed on Euronext markets, non-U.S. financial services firms that were members of Euronext markets or holders of exchange licenses with respect to the Euronext markets. The Delaware trust was empowered to take actions to mitigate the effects of any material adverse change in European law that had an ''extraterritorial'' impact on the non-European issuers listed on NYSE Group securities exchanges, non-European financial services firms that were members of any NYSE Group securities market or holders of exchange licenses with respect to the NYSE Group securities exchanges.[7]

The Dutch foundation and the Delaware trust remained in effect after the merger of ICE Holdings (then known as IntercontinentalExchange, Inc.) and NYSE Euronext in 2013 under ICE (then known as IntercontinentalExchange Group, Inc.) as a new public holding company. However, in connection with ICE's announced plan to sell the Euronext securities exchanges in an initial public offering, the Dutch Ministry of Finance permitted modifications of the terms of the governing document of the Dutch foundation under which the powers of the Dutch foundation would cease to apply to ICE and its affiliates at such time as ICE ceased to hold a ''controlling interest'' in Euronext, with ''controlling interest'' defined by reference to the definition of ''control'' under Rule 10 of the International Financial Reporting Standards (''IFRS 10'').[8] In June 2014, ICE announced that

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release Nos. 73373 (October 16, 2014), 79 FR 63191 (SR–NYSE–2014–53); 73372 (October 16, 2014), 79 FR 63201 (SR–NYSEMKT–2014–83); 73374 (October 16, 2014), 79 FR 63188 (SR–NYSEArca–2014–112).

[4] In Amendment No. 1, the NYSE Exchanges made a technical and non-material correction to a statement in each filing regarding the ownership of NYSE Amex Options LLC by ICE. The Commission notes that the NYSE Exchanges submitted a comment letter to each filing on October 24, 2014 attaching Amendment No. 1, and, consequently, Amendment No. 1 is available in the public comment files for SR–NYSE–2014–53, SR–NYSEMKT–2014–83, and SR–NYSEArca–2014–112 on the Commission's Web site. Because Amendment No. 1 is technical in nature, the Commission is not required to publish it for public comment.

[5] ICE, a public company listed on the Exchange, owns 100% of Intercontinental Exchange Holdings, Inc., a Delaware corporation (''ICE Holdings''), which in turn owns 100% of NYSE Holdings. Through ICE Holdings, NYSE Holdings and NYSE Group, ICE indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations, the NYSE Exchanges and (2) 100% of the equity interest of NYSE Market (DE), Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca L.L.C. and NYSE Arca Equities, Inc. ICE also indirectly owns a majority interest in NYSE Amex Options LLC. *See* Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE–2013–42; SR–NYSEMKT–2013–50; SR–NYSEArca–2013–62) (approving proposed rule change relating to a corporate transaction in which NYSE Euronext will become a wholly owned subsidiary of IntercontinentalExchange Group, Inc.).

[6] *See* Exchange Act Release No. 55026 (Dec. 29, 2006) (SR–NYSE–2006–120), 72 FR 814, 816–17 (January 8, 2007) (the ''NYSE Euronext Notice''). NYSE Euronext acquired NYSE MKT, the third of the NYSE Exchanges, in 2008.

[7] An explanation of the terms of the Dutch foundation and the Delaware trust is included in the NYSE Euronext Notice. Subsequent modifications to the arrangements, to the extent relevant to the proposed rule change, are described in the Notices.

[8] Excerpts from the Further Amended and Restated Governance and Option Agreement, dated March 21, 2014, among the Dutch foundation, Euronext Group N.V. and ICE are attached to the Notices as Exhibit 5C.

it had sold all but approximately 6% of the ownership interest in Euronext in an underwritten public offering outside the United States.[9] As stated in the Notices, upon ICE's application, the Dutch Ministry of Finance confirmed on July 16, 2014 that the conditions to the cessation of the application of the Dutch foundation to ICE had been satisfied or waived.[10] As a result, the NYSE Exchanges represent that ICE and its subsidiaries are no longer subject to the provisions of the Dutch foundation.

In the 2013 merger, NYSE Euronext was succeeded by the entity now known as NYSE Holdings, which is currently a party to the Trust Agreement. At that time, references to the nominating and governance committee of the board of directors of NYSE Euronext, which selected the Trustees of the Delaware trust, were replaced by references to the nominating and governance committee of the board of directors of ICE.[11] Other provisions of the Trust Agreement are substantially unchanged.[12]

In connection with the Combination of NYSE Group and Euronext in 2007 and the establishment of the Dutch foundation and the Delaware trust, the Certificate of Incorporation and Bylaws of NYSE Euronext included several provisions relating to representation of European interests on the board of directors and other provisions requiring the board to give due consideration to European regulatory requirements and the interests of identified categories of European stakeholders. These provisions are summarized in the NYSE Euronext Notice. Each such provision was subject to automatic revocation in the event that NYSE Euronext no longer held a controlling interest in Euronext or certain of its subsidiaries. For this purpose, ''controlling interest'' was defined to mean 50% or more of the outstanding shares of each class of voting securities and of the combined voting power of outstanding voting securities entitled to vote generally in the election of directors. Substantially identical provisions were added to the Certificate of Incorporation and Bylaws of ICE and ICE Holdings, and were retained in the Operating Agreement of NYSE Holdings, when ICE acquired NYSE Euronext in 2013, except that the ''controlling interest'' test was modified to become a ''control'' test under IFRS 10, as described above with respect to the Dutch foundation. As a result of the initial public offering of Euronext, ICE has established that it no longer controls Euronext within the meaning of IFRS 10, and the provisions of the constituent documents of ICE, ICE Holdings and NYSE Holdings have automatically and without further action become void and are of no further force and effect.

Termination of the Delaware trust would be implemented through a unanimous written consent of all parties to, or otherwise bound by, the Trust Agreement.[13] The proposed rule changes and exhibits thereto contain modifications to the corporate governance documents of NYSE Holdings, NYSE Group, the Exchange, NYSE MKT, NYSE Market and NYSE Regulation that delete references to the Delaware trust and make related conforming changes thereto.[14]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of Section 6 of the Act[15] and the rules and regulations thereunder applicable to a national securities exchange.[16] The Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the exchanges' rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The NYSE Exchanges believe that the regulatory considerations that led to the implementation of the Trust Agreement in 2007 have been mooted by the sale of Euronext in June 2014, the automatic revocation of corporate governance provisions applicable to ICE, ICE Holdings and NYSE Holdings that occurred upon such sale, and the NYSE Exchanges' representation that the Dutch foundation which functioned as a European analog to the Delaware trust, ceased to have any authority over ICE and its subsidiaries upon the closing of the sale of Euronext. In addition, the NYSE Exchanges represent that continuance of the Trust Agreement imposes administrative burdens and costs upon the exchanges and their affiliates that create impediments to a free and open market, and may cause investor uncertainty. In particular, according to the NYSE Exchanges, the Trust Agreement imposes administrative burdens on ICE and the nominating and governance committee of its board of directors, such as the need to periodically consider and vote on trustees; the need to consider whether any proposed action requires approval under the Trust Agreement and, if so, the obligation to prepare materials for consideration and vote by the Trustees; and the need to consider whether any proposed action requires an amendment to the Trust Agreement and, if so, the additional obligation to submit such amendment to the Commission for approval under Rule 19b–4.[18] According to the NYSE Exchanges, the Trust Agreement also results in out-of-pocket costs to the exchanges and their affiliates including the fees of the individual Trustees and the Delaware Trustee as well as fees of counsel incurred in connection with review of proposed amendments and assistance with the Commission approval process.

The Commission believes that the NYSE Exchanges' proposal to terminate the Trust Agreement is consistent with the requirements of Section 6(b)(5) of the Act[19] because the proposed rule changes would be consistent with and facilitate a corporate governance

[9] ICE's press release dated June 24, 2014 is available at the following link: *http://ir.theice.com/investors-and-media/press/press-releases/press-release-details/2014/Intercontinental-Exchange-Announces-Closing-of-Euronext-Initial-Public-Offering/default.aspx.*

[10] An English translation provided by the NYSE Exchanges of the Dutch Ministry of Finance's letter is attached to the Notices as Exhibit 5D.

[11] *See* Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE–2013–42; SR–NYSEMKT–2013–50; SR–NYSEArca–2013–62).

[12] *See* Exchange Act Release No. 72158 (May 13, 2014) (SR–NYSE–2014–23), 79 FR 28784 (May 19, 2014) (notice of filing and immediate effectiveness of proposed rule change relating to name changes of the Exchange's ultimate parent and revising Trust Agreement to reflect name changes of ICE and ICE Holdings).

[13] A form of unanimous written consent of all parties to, or otherwise bound by, the Trust Agreement resolving that the Delaware trust be terminated is attached to the Notices as Exhibit 5B.

[14] In particular, the NYSE Exchanges propose to amend: (1) The Fifth Amended and Restated Limited Liability Company Agreement of NYSE Holdings to eliminate the definition of the term ''Trust'' in Section 1.1 and the references to the Delaware trust in Section 7.2; (2) the Third Amended and Restated Certificate of Incorporation of NYSE Group to eliminate references to the Delaware trust in Article IV, Section 4(a) and (b); (3) the Sixth Amended and Restated Operating Agreement of the Exchange to eliminate references to the Delaware trust in Section 3.03; (4) the Fifth Amended and Restated Operating Agreement of NYSE MKT to eliminate references to the Delaware trust in Section 3.03; (5) the Second Amended and Restated Certificate of Incorporation of NYSE Market to eliminate references to the Delaware trust in Article IV, Section 2; and (6) the Restated Certificate of Incorporation of NYSE Regulation to eliminate references to the Delaware trust in Article V.

[15] 15 U.S.C. 78f.

[16] Additionally, in approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 17 CFR 240.19b–4.

[19] 15 U.S.C. 78f(b)(5).

structure for the NYSE Exchanges that is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Furthermore, the termination of the Delaware trust may remove impediments to the operation of the NYSE exchanges by eliminating certain expenses and administrative burdens as well as the potential for uncertainty among analysts and investors as to the practical implications of the Delaware trust on the exchanges.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule changes (SR–NYSE–2014–53; SR–NYSEMKT–2014–83; SR–NYSEArca–2014–112), as modified by Amendment No. 1, be, and hereby are, approved.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–28878 Filed 12–9–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73735; File No. SR–FICC–2014–07]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Amend the Clearing Rules of the Mortgage-Backed Securities Division To Establish a Membership Category and Minimum Financial Requirements for Insured Credit Unions

December 4, 2014.

I. Introduction

On October 15, 2014, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2014–07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on October 24, 2014.[3] The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

Pursuant to this filing, FICC proposed to amend the clearing rules of the Mortgage-Backed Securities Division (''MBSD'') of FICC in order to establish a membership category and minimum financial requirements for ''insured credit unions,'' as such term is defined in the Federal Credit Union Act (''FCUA'').[4] Specifically, FICC proposed to revise MBSD Rule 2A, Section 1, to create a membership category for insured credit unions that are in good standing with their primary regulators (''Insured Credit Union Clearing Member''). For loss allocation purposes, Insured Credit Union Clearing Members would be designated as ''Tier One Clearing Members'' in accordance with MBSD Rule 4, Section 7. In addition, FICC has proposed to add a provision to MBSD Rule 2A, Section 2, which would require an applicant applying to become an Insured Credit Union Clearing Member to have a level of equity capital as of the end of the month prior to the effective date of their membership of at least $100 million and achieve the ''well capitalized'' statutory net worth category classification defined by the National Credit Union Administration (''NCUA'') under 12 CFR part 702.

Insured credit unions applying for membership under this new category would be required to meet all other applicable financial, credit, and operational membership qualifications and standards for clearing members that are contained in MBSD Rule 2A, Section 2. In particular, such applicants would have to demonstrate an established profitable business history of a minimum of 6 months or personnel with sufficient operational background and business experience for the firm to conduct its business and to be a member (as is required of all other membership categories). Insured credit unions seeking membership would have to demonstrate an ability to communicate with FICC, fulfill anticipated commitments to and meet the operational requirements of FICC with necessary promptness and accuracy, and conform to any condition and requirement that FICC reasonably deems necessary for its protection or that of its Members.

FICC believes the participation of insured credit unions as guaranteed service members will contribute to the safety, efficiency, and transparency of the market by allowing FICC to capture a greater part of the activity of its existing members and by introducing activity of current non-members to FICC. FICC also believes that insured credit unions will benefit from the MBSD clearing service and the associated operational efficiencies of a central counterparty service.

III. Discussion

Section 19(b)(2)(C) of the Act[5] directs the Commission to approve a self-regulatory organization's proposed rule change if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions.

The Commission finds that, as proposed, FICC's rule change to establish a membership category and minimum financial, credit, and operational requirements and standards for insured credit unions, as defined in FICC's proposal, is consistent with Section 17A(b)(3)(F) of the Act.[7] The Commissions believes that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions, because by allowing insured credit unions to participate as MBSD members, these firms will be able to avail themselves of the benefits of central counterparty service including, among other things, trade comparison, to-be-announced netting, electronic pool notification allocation, pool comparison, pool netting, settlement, and risk management for eligible securities. Furthermore, the rule change will also allow existing FICC members to submit eligible trading activity with qualified insured credit unions directly to the MBSD of FICC, thereby also extending

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[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 73391 (October 20, 2014), 79 FR 63657 (October 24, 2014) (SR–FICC–2014–07).

[4] The FCUA defines ''Insured credit unions'' as ''any credit union the member accounts of which are insured in accordance with the provisions of Title II of [FCUA] . . .'' According to FICC, the term ''insured credit union'' includes all credit unions chartered by the National Credit Union Administration (''NCUA''), the independent federal agency that regulates charters and supervises federal credit unions, because Title II of the FCUA requires all credit unions that are chartered by the NCUA to have insured accounts. Furthermore, FICC has stated that the term ''insured credit unions'' also includes both federally-insured state credit unions and federally-insured credit unions operating under the jurisdiction of the Department of Defense because Title II of the FCUA permits the NCUA Board to insure those types of credit unions.

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).