always been) than the fee currently charged by the Exchange to other market participants.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[14] 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 Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 Exchange 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*. Please include File Number SR–ISE–2012–01 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–ISE–2012–01. 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 a.m. and 3 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–ISE–2012–01 and should be submitted on or before February 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1175 Filed 1–20–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66171; File Nos. SR–EDGA–2011–34; SR–EDGX–2011–33; SR–ISE–2011–69; SR–NYSE–2011–51; SR–NYSEAmex–2011–78; SR–NYSEArca–2011–72]

Self-Regulatory Organizations; EDGA Exchange, Inc.; EDGX Exchange, Inc.; International Securities Exchange, LLC; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to a Corporate Transaction in Which Deutsche Börse AG and NYSE Euronext Would Become Subsidiaries of Alpha Beta Netherlands Holding N.V.

January 17, 2012.

I. Introduction

On October 12, 2011, each of EDGA Exchange, Inc (''EDGA''), EDGX Exchange, Inc. (''EDGX''), International Securities Exchange LLC (''ISE''), New York Stock Exchange LLC (''Exchange''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] proposed rule changes in which their respective indirect parent owners will become subsidiaries of Alpha Beta Netherlands Holding N.V (''Holdco''). The proposed rule changes were published for comment in the **Federal Register** on October 20, 2011.[4] The Commission received three comment letters, one each on the NYSE, NYSE Amex, and NYSE Arca proposals, from one commenter.[5] The Exchange filed a response to these comments on January 5, 2012.[6]

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 65562 (October 14, 2011), 76 FR 65288 (October 20, 2011) (SR–NYSE–2011–51) (''Notice''); 65563 (October 14, 2011), 76 FR 65272 (October 20, 2011) (SR–NYSEAmex–2011–78) (''NYSE Amex Notice''); 65564 (October 14, 2011), 76 FR 65264 (October 20, 2011) (SR–EDGA–2011–34) (''EDGA Notice''); 65565 (October 14, 2011), 76 FR 65255 (October 20, 2011) (SR–EDGX–2011–33) (''EDGX Notice''); 65566 (October 14, 2011), 76 FR 65247 (October 20, 2011) (SR–ISE–2011–69) (''ISE Notice''); 65567 (October 14, 2011), 76 FR 65230 (October 20, 2011) (SR–NYSEArca–2011–72) (''NYSE Arca Notice'').

[5] *See* Letters to Commission, from Andrew Rothlein, dated November 2, 2011 (''Rothlein Letters'').

[6] *See* letter from Janet McGinniss, Senior Vice President, Legal & Corporate Secretary, NYSE, to Elizabeth M. Murphy, Secretary, Commission, dated January 5, 2012 (''NYSE Response to Comments'').

Continued

The Commission has reviewed carefully the proposed rule change, the comment letters, and 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.[7] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act,[8] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. Section 6(b) of the Act[9] also requires that the rules of the exchange 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.

II. Discussion

The Exchange, NYSE Amex and NYSE Arca (each a ''NYSE Exchange'') and ISE, EDGA and EDGX (each a ''DB Exchange'' or a ''DB U.S. Regulated Subsidiary'') have submitted their proposed rule changes in connection with the proposed business combination (the ''Combination'') of NYSE Euronext, a Delaware corporation (''NYSE Euronext''), and Deutsche Börse AG, an Aktiengesellschaft organized under the laws of the Federal Republic of Germany (''Deutsche Börse'').

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns (1) 100% of the equity interest of the NYSE Exchanges and (2) 100% of the equity interest of NYSE Market, Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca L.L.C. (''NYSE Arca LLC'') and NYSE Arca Equities, Inc. (''NYSE Arca Equities'') (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca LLC and NYSE Arca Equities, the ''NYSE U.S. Regulated Subsidiaries'' and each, a ''NYSE U.S. Regulated Subsidiary'').

Deutsche Börse indirectly owns 50% of the equity interest of International Securities Exchange Holdings, Inc. (''ISE Holdings''), which in turn holds 100% of the equity interest of ISE. ISE Holdings also holds 31.54% of the equity interest of Direct Edge Holdings LLC (''Direct Edge Holdings''), which in turn indirectly holds 100% of the equity interest of EDGA and EDGX.[10]

As a result of the Combination, the businesses of NYSE Euronext and Deutsche Börse, including the NYSE U.S. Regulated Subsidiaries and the DB U.S. Regulated Subsidiaries (together, the ''U.S. Regulated Subsidiaries'' and each, a ''U.S. Regulated Subsidiary''), would be held under a single, publicly traded holding company organized under the laws of the Netherlands (''Holdco'').[11] The proposed rule changes are necessary to effectuate the consummation of the Combination and will not be operative until the date of the consummation of the Combination (the ''Closing Date''). The proposed rule changes and exhibits thereto contain modifications to the underlying corporate governance documents of the U.S. Regulated Subsidiaries and their respective direct and indirect owners that reflect the current structure of the Combination. The Commission notes that any changes to the structure of the Combination that are made subsequent to the date of this approval order but prior to the Closing Date may be considered additional proposed rule changes required to be filed with and approved by the Commission pursuant to Section 19 of the Act.[12] In addition, the Commission notes that, if the Combination is not consummated, the proposed rule changes will not become effective.

A. Corporate Structure

Following the Combination, Holdco would be a for-profit, publicly traded corporation formed under the laws of the Netherlands and would act as the holding company for the businesses of NYSE Euronext and Deutsche Börse, with NYSE Euronext and Deutsche Börse each being a separate subsidiary of Holdco. Holdco would hold all of the equity interests in NYSE Euronext, which would hold (1) 100% of the equity interest of NYSE Group (which, in turn, would continue to directly or indirectly hold 100% of the equity interests of the NYSE U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal, and the United Kingdom). Holdco would also hold a majority of the equity interests in Deutsche Börse,

On January 9, 2012, the Commission received three rebuttal letters to the NYSE Response to Comments (the ''Rothlein Rebuttal Letters'').

[7] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] *Id.*

[10] Following a corporate transaction in 2007 (the ''2007 Transaction''), ISE Holdings became a wholly-owned subsidiary of U.S. Exchange Holdings, Inc. (''U.S. Exchange Holdings''), which is wholly-owned by Eurex Frankfurt AG (''Eurex Frankfurt,'' and, with Deutsche Börse, the ''German Upstream Owners''). Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich AG (''Eurex Zürich''), which, in turn, is jointly owned by Deutsche Börse and SIX Swiss Exchange AG (''SWX''), a wholly-owned subsidiary of SIX Group AG (SIX Group AG, SWX, and Eurex Zürich are referred to collectively as the ''Swiss Upstream Owners,'' and the Swiss Upstream Owners and the German Upstream Owners are referred to collectively as the ''non-U.S. Upstream Owners''). As a result of ISE Holdings' purchase of an equity interest in Direct Edge Holdings, the non-U.S. Upstream Owners, U.S. Exchange Holdings (together with the non-U.S. Upstream Owners, the ''Upstream Owners''), and ISE Holdings acquired indirect ownership and voting interests in EDGX and EDGA. *See* Securities Exchange Act Release No. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (File No. SR–ISE–2008–85) (order relating to ISE Holdings' purchase of an ownership interest in Direct Edge Holdings); *see also,* Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101) (order relating to Eurex Frankfurt's acquisition of an indirect interest in ISE Holdings) (''Eurex Order'').

In connection with the 2007 Transaction, each of the non-U.S. Upstream Owners adopted corporate resolutions (collectively, the ''2007 Resolutions'') designed to maintain the independence of the regulatory functions of ISE. *See* Eurex Order. In 2007, the non-U.S. Upstream Owners were Eurex Frankfurt, Deutsche Börse AG, Eurex Zürich, SWX, SWX Group, and Verein SWX Swiss Exchange. The 2007 Resolutions and the corporate governing documents of U.S. Exchange Holdings and ISE Holdings related to ISE and, by their terms, did not apply to additional national securities exchanges, such as EDGX and EDGA, that the Upstream Owners and ISE Holdings might control, directly or indirectly, as a result of a subsequent transaction. To maintain the independence of the regulatory function of EDGX and EDGA, in connection with EDGX's and EDGA's Form 1 Applications, each of the non-U.S. Upstream Owners adopted supplemental resolutions (the ''Supplemental Resolutions'') that apply the 2007 Resolutions to EDGX and EDGA in the same manner and to the same extent as the 2007 Resolutions apply to ISE. Accordingly, the Supplemental Resolutions extend to EDGX and EDGA the commitments that the non-U.S. Upstream Owners made in the 2007 Resolutions with respect to ISE. *See* Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196).

[11] Holdco is currently named ''Alpha Beta Netherlands Holding N.V.,'' but it is expected that Holdco will be renamed prior to the completion of the Combination to a name agreed between NYSE Euronext and Deutsche Börse. Each of EDGA, EDGX, ISE, NYSE, NYSE Amex and NYSE Arca would amend their respective rules and corporate documents to reflect Holdco's new name.

[12] 15 U.S.C. 78s.

which would indirectly hold 50% of the equity interest of ISE Holdings (which, in turn, would continue to hold (1) 100% of the equity interest of ISE and (2) 31.54% of the equity interest of Direct Edge Holdings). Direct Edge Holdings would continue to indirectly hold 100% of the equity interest of EDGA and EDGX. Holdco intends to list its ordinary shares on the New York Stock Exchange, the regulated market of the Frankfurt Stock Exchange, and the regulated market segment of Euronext Paris. Holdco and its subsidiaries will have dual headquarters in Frankfurt and New York.

In Europe, NYSE Euronext, Deutsche Börse and their respective subsidiaries own several European exchanges, including trading operations on regulated and non-regulated markets for cash products in Germany, France, Belgium, the Netherlands, and Portugal and derivatives in the United Kingdom and in the five above-mentioned locations. As a result, the activities of the NYSE Euronext and Deutsche Börse European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht), the Hessian Exchange Supervisory Authority, the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (Autorité des Marchés Financiers), the French Prudential Supervisory Authority (Autorité de Contrôle Prudentiel), the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten), the Belgian Financial Services and Markets Authority (Autorité des Services et Marchés Financiers), the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários—CMVM), and the U.K. Financial Services Authority (FSA).

The NYSE Exchanges and DB Exchanges represent that the Combination will have no effect on the ability of any party to trade securities on the NYSE Exchanges or DB Exchanges. Other than as described herein, the NYSE Exchanges and the DB Exchanges also represent that Holdco will not make any changes to the regulated activities of the U.S. Regulated Subsidiaries in connection with the Combination. If Holdco determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission.

A core aspect of the structure of the Combination is local regulation of the marketplace, members, and issuers. Therefore, securities exchanges, members, and issuers of the U.S. Regulated Subsidiaries will continue to be regulated in the same manner as they are currently regulated. The Commission notes that this conclusion (*i.e.,* that securities exchanges, members, and issuers of the U.S. Regulated Subsidiaries will continue to be regulated in the same manner as they are currently regulated) is based on the structure of the Combination as described in this proposal.

1. Holdco

Following the Combination, Holdco will be a for-profit, publicly traded corporation that will act as a holding company for the businesses of NYSE Euronext and Deutsche Börse. Holdco will hold (i) all of the equity interests in NYSE Euronext, which in turn, directly or indirectly holds 100 percent of the equity interests of the NYSE U.S. Regulated Subsidiaries, and (ii) a majority of the equity interests in Deutsche Börse, which indirectly holds interests in ISE, EDGA, and EDGX. Section 19(b) of the Act and Rule 19b–4 thereunder require a self-regulatory organization (''SRO'') to file proposed rule changes with the Commission. Although Holdco is not an SRO, certain provisions of its proposed Deed of Amendment of Articles of Association (the ''Holdco Articles''), along with other corporate documents, are rules of an exchange [13] if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of the exchange, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder. Accordingly, the NYSE Exchanges and DB Exchanges have filed the proposed Holdco Articles, along with other corporate documents, with the Commission.

Voting and Ownership Limitations

The proposed Holdco Articles include restrictions on the ability to vote and own shares of stock of Holdco. Under the proposed Holdco Articles, no person (either alone or together with its related persons) [14] will be entitled to vote or cause the voting of shares of stock of Holdco beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on such matter. No person (either alone or together with its related persons) may acquire the ability to vote more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons not to vote shares of Holdco's outstanding capital stock. Holdco shall disregard any such votes purported to be cast in excess of these limitations.[15]

In addition, no person (either alone or together with its related persons) may at any time beneficially own shares of stock of Holdco representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter, except that a 20% restriction would apply to any person, either alone or with its related person, that is a member of an NYSE Exchange or DB Exchange.[16] In the event that a person, either alone or together with its related persons, beneficially owns shares of stock of Holdco in excess of the 40% threshold, such person and its related persons will be obligated to offer for sale and to transfer that number of shares necessary so that such person shall beneficially own a number of shares entitling the holder thereof to cast votes on any matter which is in the aggregate no more than 40% of the then outstanding votes entitled to be cast on any matter.[17] If such person(s) fails to comply within two weeks, Holdco will be irrevocably authorized to act on behalf of such person(s) in order to ensure compliance with the Holdco transfer obligation.[18]

Furthermore, the Holdco Articles would provide that in the event any person, either alone or together with its related persons, exceeds the Holdco ownership restriction (any such person(s), a ''Non-Compliant Owner''), the Non-Compliant Owner would cease to have certain rights to the extent that its shareholding exceeds the Holdco ownership restriction. Specifically, the Non-Compliant Owner's rights to vote, to attend general meetings of Holdco shareholders and to receive dividends or other distributions attached to such shares in excess of the Holdco

[13] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If Holdco decides to change the Holdco Articles, Holdco must submit such change to the board of directors of the U.S. Regulated Subsidiaries, and if any or all of such board of directors shall determine that such amendment must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* proposed Holdco Articles, Section 36.2.

[14] *See* proposed Holdco Articles, Section 34.1 and Section 34.8 for the definition of ''related person.''

[15] *See* proposed Holdco Articles, Section 34.1.

[16] *See* proposed Holdco Articles, Section 35.1.

[17] *See* proposed Holdco Articles, Sections 35.1, 35.4.

[18] *See* proposed Holdco Articles of Association, Section 35.7.

ownership restriction would be suspended for so long as the Holdco ownership restriction is exceeded.[19]

Further, the Holdco Articles would permit the Holdco board of directors to require any person and its related persons that the board reasonably believes to be subject to the voting or ownership limitations summarized above, or owning in the aggregate 5% or more of the then issued and outstanding shares of Holdco entitled to vote on any matter, which ownership has not been reported to Holdco, to provide Holdco information regarding such ownership upon the request of the Holdco board of directors.[20]

The Holdco board of directors may waive the provisions regarding voting and ownership limits, subject to a determination by the Holdco board of directors that the exercise of such voting rights (or the entering into of a voting agreement) or ownership, as applicable:

- Will not impair the ability of any of the U.S. Regulated Subsidiaries, Holdco, NYSE Group, or ISE Holdings to discharge their respective responsibilities under the Act and the rules and regulations thereunder;
- Will not impair the ability of any of the European Market Subsidiaries, Holdco, or Euronext to discharge their respective responsibilities under the European Exchange Regulations; [21]
- Is otherwise in the best interest of Holdco, its shareholders, the U.S. Regulated Subsidiaries, and the European Market Subsidiaries; and
- Will not impair the Commission's ability to enforce the Act or the European Regulators' ability to enforce the European Exchange Regulations.[22]

Such resolution expressly permitting such voting or ownership must be filed with and approved by the Commission under Section 19 of the Act [23] and filed with and approved by each European Regulator having appropriate jurisdiction and authority.

In addition, for so long as Holdco directly or indirectly controls the Exchange, NYSE Market, NYSE Arca, or NYSE Arca Equities or any facility of NYSE Arca, NYSE Amex, ISE, EDGA, or EDGX, the Holdco board of directors cannot waive the voting and ownership limits above the 20% threshold for any person if such person or its related persons is a member of NYSE, an ETP Holder of NYSE Arca Equities, or an OTP Holder or an OTP Firm of NYSE Arca,[24] a member of Amex, a member of ISE, a member of EDGA, or a member of EDGX.[25] Further, the Holdco board of directors also cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act) (a ''U.S. Disqualified Person'') or has been determined by a European Regulator to be in violation of laws or regulations adopted in accordance with the European Directive on Markets in Financial Instruments applicable to any European Market Subsidiary requiring such person to act fairly, honestly and professionally (a ''European Disqualified Person'').[26]

Members that trade on an exchange traditionally have had ownership interests in such exchange. As the Commission has noted in the past, however, a member's interest in an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.[27] A member that is a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions.

The Commission finds the ownership and voting restrictions in the proposed Holdco Articles are consistent with the Act. These requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission, the Exchange, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act.

2. NYSE Euronext and NYSE Group

Following the Combination, NYSE Euronext will be a wholly-owned subsidiary of Holdco. Furthermore, NYSE Euronext will no longer be a publicly-held company and the NYSE Exchanges have proposed certain changes to reflect that NYSE Euronext will become a wholly owned subsidiary and will no longer be publicly held.[28]

[19] *See* proposed Holdco Articles, Section 35.6.

[20] *See* proposed Holdco Articles, Section 35.9.

[21] *See* proposed Holdco Articles, Sections 34.3, 35.3, and Section 1.1 for the definitions of ''European Exchange Regulations'' and ''European Market Subsidiary.''

[22] *See* Proposed Holdco Articles, Section 1.1, for the definition of ''European Regulator.''

[23] 15 U.S.C. 78s.

[24] ''ETP Holder'' is defined in the NYSE Arca Equities rules of NYSE Arca. ''OTP Holder'' and ''OTP Firm'' are defined in the rules of NYSE Arca.

[25] *See* Holdco Articles at 34.3 and 35.3.

[26] *See id.*

[27] *See, e.g.,* Securities Exchange Act Release Nos. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order approving registration application of BATS Y–Exchange, Inc. as a national securities exchange); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order approving registration applications of EDGX Exchange, Inc. and EDGA Exchange, Inc. as national securities exchanges); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order approving registration application of BATS Exchange, Inc. as a national securities exchange); 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (order approving proposed combination between NYSE Group, Inc. and Euronext N.V.); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving merger of New York Stock Exchange, Inc. and Archipelago, and demutualization of New York Stock Exchange, Inc. (''NYSE Inc.-Archipelago Merger Order'')); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR–CHX–2004–26); 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR–PCX–2004–08); 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR–BSE–2003–19).

[28] The NYSE Exchanges propose to amend certain provisions of NYSE Euronext's organizational documents to reflect that, after the Combination, NYSE Euronext will be an intermediate holding company and will no longer be a publicly-held company. The NYSE Euronext Certificate and the NYSE Euronext Bylaws would be amended to (1) simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly-owned subsidiary; (2) conform certain provisions to analogous provisions of the organizational documents of NYSE Group, which will likewise be an indirect wholly-owned subsidiary of Holdco following completion of the Combination; and (3) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions, and to update cross-references to sections, consistent with the other amendments to the NYSE Euronext Certificate and the NYSE Euronext Bylaws set forth in this Proposed Rule Change). In addition, the current Independence Policy of the NYSE Euronext board of directors would cease to be in effect.

Generally, the NYSE Exchanges propose, in part, the following changes to the NYSE Euronext Certificate and Bylaws: (i) decreasing the number of authorized shares of NYSE Euronext, (ii) allowing shareholders to call special meetings, take shareholder action by written consent, and to postpone such meetings, (iii) allowing shareholders to fill board vacancies, (iv) deleting provisions requiring a supermajority vote of shareholders to amend or repeal certain sections of the NYSE Euronext certificate of incorporation, (v) clarifying that notice of shareholder meetings is not required if waived, (vi) deleting the requirement that directors be elected by a majority of the votes cast, (vii) deleting provisions requiring advance notice from shareholders of shareholder director nominations or shareholder proposals, (viii) deleting provisions relating to the mechanics of shareholders' meetings, such as the appointment of an inspector of elections, (ix) clarifying that NYSE Euronext may not have a Nominating and Governance Committee, and (x) deleting the requirement that 75% of the Euronext board must be independent.

Generally, the NYSE Exchanges propose, in part, the following changes to NYSE Group's Certificate and Bylaws: (i) Amending the issuance and certificate of designations for preferred stock; (ii) clarifying the ability to fix the number of directors and making the board's ability to remove directors subject to the rights of holder of preferred stock; (iii) clarifying that notice of shareholder meetings is not

NYSE Euronext will act as a holding company for the businesses of the NYSE Group and Euronext. NYSE Euronext will own all of the equity interests in NYSE Group and its subsidiaries, including the Exchange, NYSE Arca, and NYSE Amex and all of the equity interests in Euronext and its respective subsidiaries. Section 19(b) of the Act and Rule 19b–4 thereunder require a SRO to file proposed rule changes with the Commission. Although NYSE Euronext and NYSE Group are not SROs, certain provisions of the current NYSE Euronext's Amended and Restated Certificate of Incorporation (''NYSE Euronext Certificate of Incorporation''), NYSE Euronext's Amended and Restated Bylaws (''NYSE Euronext Bylaws''), NYSE Group's Amended and Restated Certificate of Incorporation (''NYSE Group Certificate of Incorporation''), and NYSE Group's Amended and Restated Bylaws (''NYSE Bylaws'') are rules of an exchange [29] if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of the exchange, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder. Accordingly, the NYSE Exchanges have filed the proposed NYSE Euronext Certificate of Incorporation, the proposed NYSE Euronext Bylaws, the proposed NYSE Group Certificate of Incorporation, and the proposed NYSE Group Bylaws with the Commission.

Voting and Ownership Limitations; Changes in Control

The NYSE Exchanges have proposed changing the voting and ownership limitations of NYSE Euronext to include a statement that such limitations would not be applicable as long as Holdco owned all of the issued and outstanding shares of NYSE Euronext and only for so long as NYSE Euronext directly or indirectly controls any NYSE U.S. Regulated Subsidiary or any European Market Subsidiary.[30] Instead, while NYSE Euronext is a wholly-owned subsidiary of Holdco, there shall be no transfer of the shares of NYSE Euronext without the approval of the Commission.[31] If NYSE Euronext ceases to be wholly owned by Holdco, but directly or indirectly controls any NYSE U.S. Regulated Subsidiary or any European Market Subsidiary, the voting and ownership limitations would apply.

In addition, the NYSE Exchanges propose amending the voting and ownership restrictions in the proposed NYSE Euronext Certificate. The NYSE Exchanges propose amending the NYSE Euronext Certificate to: (i) Change the 10% percent threshold for the voting restriction to a 20% threshold, (ii) change the 20% percent threshold for the ownership restriction to a 40% restriction, except that the 20% threshold would continue to apply to any person who is (or with respect to whom a related person is) [32] a member of the Exchange or NYSE Amex, an ETP Holder, or an OTP Holder or OTP Firm; and (iii) incorporate NYSE Amex into certain provisions. The NYSE Euronext board of directors would be unable to waive the voting and ownership limits above the 20% threshold if such person or its related persons is a member of the Exchange or NYSE Amex, an ETP Holder, an OTP Holder or an OTP Firm.[33] Similar changes have been proposed for NYSE Group.[34] Moreover, the NYSE Exchanges have proposed changing the voting and ownership limitations of NYSE Group so that such limitations would apply only for so long as NYSE Group directly or indirectly controls any NYSE U.S. Regulated Subsidiary or any European Market Subsidiary.[35]

The Commission finds that the changes to the ownership and voting restrictions in the proposed NYSE Euronext Certificate and the proposed NYSE Group Certificate, as well as the change in control provisions in the NYSE Euronext Certificate are consistent with the Act. The Commission notes that the proposed ownership and voting percentage restrictions are consistent with thresholds previously approved by the Commission.[36] Moreover, the transfer, ownership and voting restrictions should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission, the NYSE U.S. Regulated Subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act.

In addition, to allow Holdco to wholly own and vote all of NYSE Euronext stock upon consummation of the Combination, Holdco delivered a written notice to the board of directors of NYSE Euronext pursuant to the procedures set forth in the current NYSE Euronext Certificate of Incorporation requesting approval of its ownership and voting of NYSE Euronext stock in excess of the NYSE Euronext voting restriction and NYSE Euronext ownership restriction.[37] The board of directors of NYSE Euronext must resolve to expressly permit ownership or voting in excess of the NYSE

required if waived in accordance with the NYSE Group Bylaws; (iv) clarifying that a list of shareholders would be deleted; (v) deleting a reference to a special meeting of shareholders; (vi) clarifying that notice of any special meeting of directors is not required if waived and updating methods of delivery of notice; (vii) deleting restrictions on telephonic participation in meetings; (viii) revising the persons authorized to execute contracts; (ix) simplifying certain aspects of the indemnification and expense advancement provisions in light of the fact that there are not expected to be any independent, non-executive directors of NYSE Group; (x) amending and clarifying the manner in which the NYSE Group Bylaws may be amended, repealed, or adopted; and (xi) amending the definition of ''Regulated Subsidiary'' in the NYSE Group Bylaws.

[29] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If NYSE Euronext decides to change its Certificate of Incorporation or Bylaws, NYSE Euronext must submit such change to the board of directors of the Exchange, NYSE Market, NYSE Regulation, NYSE Amex, NYSE Arca Equities, and NYSE Arca, and if any or all of such board of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* current NYSE Euronext Certificate of Incorporation, Article X and current NYSE Euronext Bylaws, Article X, Section 10.10(C); *see also,* proposed NYSE Euronext Certificate of Incorporation, Article X and proposed NYSE Euronext Bylaws, 10.10(C). If NYSE Group decides to change its Certificate of Incorporation or Bylaws, NYSE Group must submit such change to the board of directors of the Exchange, NYSE Market, NYSE Regulation, NYSE Amex, NYSE Arca Equities, and NYSE Arca, and if any or all of such board of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* current NYSE Group Certificate of Incorporation, Article XII and current NYSE Group Bylaws, Section 7.9(A); *see also* proposed NYSE Group Certificate of Incorporation, Article XII and proposed NYSE Group Bylaws, Section 7.9(b).

[30] *See* proposed NYSE Euronext Certificate of Incorporation, Article V, Introduction.

[31] *See* proposed NYSE Euronext Certificate of Incorporation, Article IV, Section 4.

[32] *See* proposed NYSE Euronext Certificate of Incorporation, Article V, Section 1(L) for the definition of ''related person.''

[33] *See* proposed NYSE Euronext Certificate of Incorporation, Article V, Section 2(A).

[34] *See* proposed NYSE Group Certificate of Incorporation, Article IV, Sections 4(b)(1)(A)(y) and 2(C).

[35] *See* proposed NYSE Group Certificate of Incorporation, Article IV, Section 4(b).

[36] *See e.g.,* Securities Exchange Release Nos. 34–49718 (May 17, 2004) (File No. SR–PCX–2004–08), 69 FR 29611 (approval of rule change proposed by the Pacific Exchange, Inc.); 49098 (January 16, 2004) (File No. SR–PHLX–2003–73), 69 FR 3974 (approval of rule change proposed by the Philadelphia Stock Exchange, Inc.); and 50170 (August 9, 2004) (File No. SR–PCX–2004–56), 69 FR 50419 (approval of rule change proposed by the Pacific Exchange, Inc. relating to initial public offering of parent of Archipelago Exchange, L.L.C.).

[37] Prior to permitting any person to exceed the ownership limitation and voting limitation, such person must deliver notice of such person's intention to own or vote shares in excess of the ownership limitation or voting limitation to the NYSE Euronext board of directors. *See* current NYSE Euronext Certificate of Incorporation, Article V, Sections 1(C) and 2(C).

Euronext voting restriction limitation and NYSE Euronext ownership restriction. Such resolution of the NYSE Euronext board of directors must be filed with and approved by the Commission under Section 19(b) of the Act, and become effective thereunder. Further, the board of directors may not approve any voting or ownership in excess of the limitations unless it determines that such ownership or exercise of voting rights (i) will not impair the ability of the NYSE U.S. Regulated Subsidiaries, NYSE Euronext, and NYSE Group to discharge their respective responsibilities under the Act and the rules and regulations thereunder, (ii) will not impair the ability of any European Market Subsidiary, NYSE Euronext, or Euronext to discharge their respective responsibilities under the European Exchange Regulations, (iii) is otherwise in the best interests of NYSE Euronext, its shareholders, and the NYSE U.S. Regulated Subsidiaries, and (iv) will not impair the Commission's ability to enforce the Act or the European Regulators' ability to enforce the European Exchange Regulations.[38] For so long as NYSE Euronext directly or indirectly controls the Exchange or NYSE Market, NYSE Arca, NYSE Arca Equities, any facility of NYSE Arca, or NYSE Amex, the NYSE Group board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is a member Exchange,[39] an ETP Holder, an OTP Holder or an OTP Firm,[40] or member of NYSE Amex.[41] Further, the NYSE Euronext board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is a U.S. Disqualified Person or a European Disqualified Person.

The notice from Holdco included representations that neither Holdco, nor any of its related persons, is: (1) A NYSE Member; (2) an Amex Member; (3) an ETP Holder, an OTP Holder or an OTP Firm; or (4) a U.S Disqualified Person or a European Disqualified Person. The NYSE Euronext board of directors adopted a resolution approving Holdco's request that it be permitted, either alone or with its related persons, to exceed the NYSE Euronext voting restriction and the NYSE Euronext ownership restriction.[42]

The Commission believes it is consistent with the Act to allow Holdco to wholly own and vote all of the outstanding common stock of NYSE Euronext. The Commission notes that Holdco represents that neither Holdco nor any of its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act), or is a member of the Exchange or NYSE Amex, an ETP Holder, an OTP Holder or an OTP Firm, or a European Disqualified Person. Moreover, Holdco has comparable voting and ownership limitations to ISE Holdings.[43] Holdco has also included in its corporate documents certain provisions designed to maintain the independence of the NYSE U.S. Regulated Subsidiaries' self-regulatory functions from Holdco, NYSE Euronext and NYSE Group.[44] Accordingly, the Commission believes that the acquisition of ownership and exercise of voting rights of NYSE Euronext common stock by Holdco will not impair the ability of the Commission or any of the NYSE U.S. Regulated Subsidiaries to discharge their respective responsibilities under the Act.

3. Proposed Amendments to Board Composition Requirements for the Exchange, NYSE Amex, NYSE Market and NYSE Regulation

The Third Amended and Restated Operating Agreement, dated as of April 1, 2009, of the Exchange (the ''Exchange Operating Agreement''), currently provides that (1) a majority of the members of the Exchange's board of directors must be U.S. persons and members of the board of directors of NYSE Euronext who satisfy the independence requirements of the NYSE Euronext board, and (2) at least 20% of the Exchange's board members must be persons who are not board members of NYSE Euronext but who qualify as independent under the independence policy of the NYSE Euronext board of directors (the ''Non-Affiliated Exchange Directors'').[45] The nominating and governance committee of the NYSE Euronext board of directors is required to designate as Non-Affiliated Exchange Directors the candidates recommended jointly by the Director Candidate Recommendation Committees of each of NYSE Market and NYSE Regulation or, in the event there are Petition Candidates (as such term is defined in the Exchange Operating Agreement), the candidates that emerge from a specified process will be designated as the Non-Affiliated Exchange Directors.[46]

Under the Proposed Rule Change, these provisions would be amended (i) to provide that the independent members of the Exchange's board of directors, rather than the nominating and governance committee of the NYSE Euronext board of directors, will designate the Non-Affiliated Exchange Directors and make the other related determinations that were previously to be made by the nominating and governance committee of the NYSE Euronext board of directors; (ii) to provide that instead of using the independence policy of the NYSE Euronext board of directors to assess the independence of the Exchange's board members, the Exchange will have its own independence policy (the ''SRO Director Independence Policy''); (iii) in light of the fact that the board of directors of NYSE Euronext will be decreased in size once it becomes a wholly-owned subsidiary of Holdco, the requirement that a majority of the members of the Exchange's board of directors must be members of the board of directors of NYSE Euronext would be eliminated; and (iv) to provide that at least 20% of the Exchange's directors must be persons who are not members of the board of directors of Holdco (rather than referring to the board of directors of NYSE Euronext). Substantially the same revisions would be made to the analogous provisions of the Amended and Restated Operating Agreement of NYSE Amex, the Amended and Restated Bylaws of NYSE Market and the Third Amended and Restated Bylaws of NYSE Regulation.

The SRO Director Independence Policy to be adopted by each of the Exchange, NYSE Market, NYSE Regulation and NYSE Amex under the Proposed Rule Change would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except that certain conforming changes would be made, including the deletion of provisions that currently apply only to NYSE Euronext directors and expressly do not apply to directors of these NYSE U.S. Regulated Subsidiaries. In

[38] *See* proposed NYSE Euronext Certificate of Incorporation, Article V, Sections 1(C) and 2(C).

[39] *See* proposed NYSE Group Certificate of Incorporation, Article IV, Sections 4(b)(1)(A)(y) and 4(b)(2)(C)(v).

[40] *See* proposed NYSE Group Certificate of Incorporation, Article IV, Sections 4(b)(1)(A)(y) and 4(b)(2)(C)(iv).

[41] *See* proposed NYSE Group Certificate of Incorporation, Article IV, Sections 4(b)(1)(A)(y) and 4(b)(2)(C)(vi).

[42] Such resolutions of the NYSE Euronext board of directors were filed as part of the proposed rule change. *See e.g.,* Exhibit A to the Notice, which exhibit is available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*), at the Commission's Public Reference Room, at the NYSE, and on the NYSE's Web site (*http://www.nyse.com*).

[43] *See supra* notes 12–18 and accompanying text.

[44] *See infra* notes 58–69 and accompanying text.

[45] *See* Third Amended and Restated Operating Agreement of New York Stock Exchange LLC, Section 2.03(a).

[46] *See id.*

particular, (i) references to NYSE Euronext would refer instead to the relevant NYSE U.S. Regulated Subsidiary or Holdco, as applicable; (ii) the requirement that at least three-fourths of the directors must be independent would be deleted, since the organizational documents of these NYSE U.S. Regulated Subsidiaries contain the independence and other qualification requirements for directors; (iii) the requirement in the Independence Policy of NYSE Euronext that the board consider the special responsibilities of a director in light of NYSE Euronext's ownership of NYSE U.S. Regulated Subsidiaries and European regulated entities would be deleted, because unlike NYSE Euronext, these NYSE U.S. Regulated Subsidiaries are not holding companies; (iv) the requirement for directors to inform the Chairman of the Nominating and Governance Committee of certain relationships and interests would be deleted, since the boards of these NYSE U.S. Regulated Subsidiaries do not have a Nominating and Governance Committee, except that in the SRO Director Independence Policy to be adopted by NYSE Regulation, this provision would reference the Nominating and Governance Committee of NYSE Regulation, Inc.; (v) references to NYSE Alternext, Inc. would refer instead to NYSE Amex, because of this entity's name change; (vi) because the current Independence Policy of NYSE Euronext provides that a director of an affiliate of a Member Organization cannot qualify as an independent director of these NYSE U.S Regulated Subsidiaries, the conflicting language stating that a director of an affiliate of a Member Organization shall not per se fail to be independent would be deleted; and (vii) because language in the current Independence Policy of NYSE Euronext provides that an executive officer of an issuer whose securities are listed on a NYSE Exchange cannot qualify as an independent director of these NYSE U.S Regulated Subsidiaries, the conflicting language providing an exception applicable only to NYSE Euronext directors would be deleted. In addition, the ''additional independence requirements'' at the end of the current Independence Policy of NYSE Euronext, which provides that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated. This provision is designed to ensure that although persons who are directors of an affiliate of a Member Organization or who are executive officers of a ''foreign private issuer'' listed on a NYSE Exchange may in some circumstances qualify as independent for purposes of NYSE Euronext board membership, such persons may not, together with executive officers of NYSE Euronext, constitute more than a minority of the total NYSE Euronext directors. Under the proposed SRO Director Independence Policy, such persons could not be deemed to be independent directors of the relevant NYSE U.S. Regulated Subsidiary and, accordingly, this limitation on the number of such persons who may serve on the board is unnecessary.

The Commission finds that these proposals, taken together, are consistent with the Act, particularly Section 6(b)(1),[47] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act. Further, the Commission notes that the NYSE Exchanges are not proposing to change any of the provisions relating to (i) the fair representation of the members of each of the NYSE Exchanges in the selection of its directors and administration of its affairs or (ii) one or more of the directors of each of the NYSE Exchanges being representative of issuers and investors and not being associated with a member of the exchange or with a broker dealer, each as required under Section 6(b)(3) of the Act.[48]

4. Deutsche Börse/ISE Holdings

Following the Combination, ISE Holdings's indirect parent, Deutsche Börse, will become a subsidiary of Holdco. Deutsche Börse will own all of the equity interests in ISE and approximately 31.54% interest in EDGA and EDGX. Section 19(b) of the Act and Rule 19b–4 thereunder require a self-regulatory organization (''SRO'') to file proposed rule changes with the Commission. Although ISE Holdings is not an SRO, certain provisions of its Amended and Restated Certificate of Incorporation (the ''ISE Holdings Certificate'') and Amended and Restated Bylaws of ISE Holdings (''the ISE Holdings Bylaws'') are rules of an exchange[49] if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of the exchange, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder. Accordingly, the DB U.S. Regulated Subsidiaries have filed a proposed change to the ISE Holdings Bylaws with the Commission.[50]

Voting and Ownership Limitations; Changes in Control of the Exchange

The proposed Second Amended and Restated Bylaws of ISE Holdings (''Proposed ISE Bylaws'') include restrictions on the ability to vote and own shares of stock of ISE Holdings. Under the ISE Holdings Certificate, no person (either alone or together with its related persons)[51] will be entitled to vote or cause the voting of shares of stock of ISE Holdings beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on such matter. No person (either alone or together with its related persons) may acquire the ability to vote more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons not to vote shares of ISE Holdings's outstanding capital stock.

In addition, no person (either alone or together with its related persons) may at any time beneficially own shares of stock of ISE Holdings representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter.[52] If a person were to obtain a voting or ownership interest in excess of the voting or ownership restrictions without obtaining the approval of the Commission, the shares of ISE Holdings would automatically transfer to a statutory trust established under and pursuant to the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§ 3801 *et seq.* (''ISE Trust''). The ISE Holdings Certificate and the ISE Holdings Bylaws provide that the board of directors of ISE Holdings may waive

[47] 15 U.S.C. 78f(b)(1).

[48] 15 U.S.C. 78f(b)(3).

[49] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If ISE Holdings decides to change its Bylaws, ISE Holdings must submit such change to the board of directors of ISE, EDGA and EDGX, and if any or all of such board of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* ISE Bylaws, Article X, Section 10.1.

[50] *See* proposed Second Amended and Restated Bylaws of International Securities Holdings, Inc. attached as Exhibit A to the EDGA Notice, EDGX Notice and ISE Notice which exhibit is available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*) and at the Commission's Public Reference Room.

[51] *See* ISE Holdings Certificate, Article IIB, Sections III(a)(i) and (b)(i).

[52] *See* ISE Holdings Certificate, Article FOURTH, Section III(a)(1)(A) and (b) and ISE Holdings Bylaws Article XI.

these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if it makes certain findings and the amendment to the ISE Holdings Bylaws has been filed with, and approved by, the Commission under Section 19(b) of the Act.[53]

The ISE Holdings board of directors may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if, in connection with the adoption of such amendment, the board of directors in its sole discretion adopts a resolution stating that it is the determination of the board of directors that such amendment:

- Will not impair the ability of ISE Holdings and any of the DB U.S. Regulated Subsidiaries, or facility thereof, to carry out their respective responsibilities under the Act and the rules and regulations thereunder;
- Is otherwise in the best interest of ISE Holdings, its stockholders and the DB U.S. Regulated Subsidiaries;
- Will not impair the Commission's ability to enforce the Act;
- For so long as ISE Holdings directly or indirectly controls the Exchange, neither such person nor any of its related persons is an ISE Member, EDGA Member or EDGX Member; and
- Neither such person nor any of its related persons is subject to any ''statutory disqualification'' (as such term is defined in Section 3(a)(39) of the Act).[54]

Such amendment shall not be effective unless it has been filed with and approved by the Commission under Section 19(b) of the Act.[55]

In addition, to allow Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings upon consummation of the Combination, Holdco has delivered written notice to the board of directors of ISE Holdings pursuant to the procedures set forth in the ISE Holdings Certificate requesting approval of its voting and ownership of ISE Holdings shares in excess of the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction. Among other things, in this notice, Holdco represented to the board of directors of ISE Holdings that neither it, nor any of its related persons, is (1) an ISE Member; (2) EDGA Member; (3) EDGX Member; or (4) subject to any ''statutory disqualification.''

The Commission believes it is consistent with the Act to allow Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings. The Commission notes that Holdco represents that neither Holdco nor any of its related persons, is (1) an ISE Member; (2) EDGA Member; (3) EDGX Member; or (4) subject to any ''statutory disqualification.''

Holdco has also included in its corporate documents certain provisions designed to maintain the independence of the DB U.S. Regulated Subsidiaries' self-regulatory functions from Holdco and Deutsche Börse.[56] Accordingly, the Commission believes that the acquisition of ownership and exercise of voting rights of ISE Holdings common stock by Holdco will not impair the ability of the Commission or any of the DB U.S. Regulated Subsidiaries to discharge their respective responsibilities under the Act.

B. Relationship of Holdco, NYSE Euronext, Deutsche Börse, SWX, ISE Holdings, NYSE Group, and the U.S. Regulated Subsidiaries; Jurisdiction Over Holdco

Although Holdco itself will not carry out regulatory functions, its activities with respect to the operation of any of the U.S. Regulated Subsidiaries must be consistent with, and not interfere with, the U.S. Regulated Subsidiaries' self-regulatory obligations. The proposed Holdco corporate documents include certain provisions that are designed to maintain the independence of the U.S. Regulated Subsidiaries' self-regulatory functions from Holdco, NYSE Euronext, ISE Holdings and NYSE Group, enable the U.S. Regulated Subsidiaries to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[57] and facilitate the ability of the U.S. Regulated Subsidiaries and the Commission to fulfill their regulatory and oversight obligations under the Act.[58]

For example, under the proposed Holdco Articles, Holdco shall comply with the U.S. federal securities laws, the European Exchange Regulations, and the respective rules and regulations thereunder; shall cooperate with the Commission, the European Regulators, and the U.S. Regulated Subsidiaries.[59] Also, each director, officer, and employee of Holdco, to the extent in discharging his or her responsibilities shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with the U.S. Regulated Subsidiaries.[60] In addition, in discharging his or her responsibilities as a member of the board, each director of Holdco must, to the fullest extent permitted by applicable law, take into consideration the effect that Holdco's actions would have on the ability of the U.S. Regulated Subsidiaries to carry out their responsibilities under the Act, on the ability of the European Market Subsidiaries to carry out their responsibilities under the European Exchange Regulations as operators of European Regulated Markets, and on the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco (i) to engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to prevent fraudulent and manipulative acts and practices in the securities markets; (ii) to promote just and equitable principles of trade in the securities markets; (iii) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (iv) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (v) in general, to protect investors and the public interest.[61] For so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, Holdco, its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries (to the extent of each U.S. Regulated Subsidiary's self-regulatory function) and the European Market Subsidiaries (to the extent of each European Market Subsidiaries' self-regulatory function).[62] Further, Holdco agrees to keep confidential all confidential information pertaining to: (1) The self-regulatory function of the any U.S. Regulated Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of any of the U.S. Regulated Subsidiaries; and (2) the self-regulatory function of the European Market Subsidiaries under the European Exchange Regulations as operator of a European Regulated

[53] 15 U.S.C. 78s(b).

[54] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III, and Amended and Restated Bylaws of ISE Holdings, Article XI.

[55] 15 U.S.C. 78s(b).

[56] *See infra* notes 58–69 and accompanying text.

[57] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[58] *See* proposed Holdco Articles Section 3.2.

[59] *See* proposed Holdco Articles Section 3.2(a) and (b).

[60] *See* proposed Holdco Articles Section 3.2(l).

[61] *See* proposed Holdco Articles, Section 3.2(k).

[62] *See* proposed Holdco Articles, Sections 3.2(i) and 3.2(j).

Market (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the European Market Subsidiaries, and not use such information for any commercial[63] purposes.[64]

In addition, Holdco's books and records shall be subject at all times to inspection and copying by the Commission, the European Regulators, any U.S. Regulated Subsidiary (provided that such books and records are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight) and any European Market Subsidiary (provided that such books and records are related to the operation or administration of such European Market Subsidiary or any European Regulated Market over which such European Market Subsidiary has regulatory authority or oversight).[65] Holdco's books and records related to U.S. Regulated Subsidiaries shall be maintained within the United States, and Holdco's books and records related to European Market Subsidiaries shall be maintained in the home jurisdiction of one or more of the European Market Subsidiaries.[66] The Holdco Articles also provide that if and to the extent that any of Holdco's books and records may relate to both European Market Subsidiaries and U.S. Regulated Subsidiaries (each such book and record an ''Overlapping Record''), Holdco shall be entitled to maintain such books and records either in the home jurisdiction of one or more European Market Subsidiaries or in the United States.[67]

In addition, for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records, premises, officers, directors, and employees of Holdco shall be deemed to be the books, records, premises, officers, directors, and employees of the U.S. Regulated Subsidiaries for purposes of and subject to oversight pursuant to the Act, and for so long as Holdco directly or indirectly controls any European Market Subsidiary, the books, records, premises, officers, directors, and employees of Holdco shall be deemed to be the books, records, premises, officers, directors, and employees of such European Market Subsidiaries for purposes of and subject to oversight pursuant to the European Exchange Regulations.[68]

Holdco and its directors and, to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, Holdco's officers and employees whose principal place of business and residence is outside of the United States irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission with respect to activities relating to the U.S. Regulated Subsidiaries, and to the jurisdiction of the European Regulators and European courts with respect to activities relating to the European Market Subsidiaries.[69]

Holdco would also sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with provisions in the Holdco Articles regarding (i) cooperation with the Commission and such U.S. Regulated Subsidiaries; (ii) compliance with U.S. federal securities laws; (iii) inspection and copying of Holdco's books, records and premises; (iv) Holdco's books, records, premises, officers, directors and employees being deemed to be those of U.S. Regulated Subsidiaries; (v) maintenance of books and records in the United States; (vi) confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function; (vii) preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries; and (viii) taking reasonable steps to cause Holdco's officers, directors and employees to consent to the applicability to them of the Holdco Articles.

Further, Holdco acknowledges that it is responsible for referring possible rule violations to the NYSE Exchanges and the DB Exchanges. Holdco will become a party to the agreement among NYSE Euronext, NYSE Group, the Exchange, NYSE Market and NYSE Regulation to provide adequate funding for NYSE Regulation.[70] In addition, Holdco will become a party to the agreement among Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX (formerly SWX), SIX Group (formerly SWX Group), Verein SIX Swiss Exchange (formerly SWX Swiss Exchange), U.S. Exchange Holdings, Inc., ISE Holdings and ISE to provide for adequate funding for ISE's regulatory responsibilities.[71]

Finally, the proposed Holdco Articles require that, for so long as Holdco controls, directly or indirectly, any of the U.S. Regulated Subsidiaries, any changes to the proposed Holdco Articles be submitted to the board of directors of such U.S. Regulated Subsidiaries, and if any such boards of directors determines that such amendment is required to be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act[72] and the rules thereunder, such change shall not be effective until filed with or filed with and approved by, the Commission.[73]

The Commission finds that these provisions are consistent with the Act, and that they are intended to assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act. With respect to the maintenance of books and records of Holdco, the Commission notes that while Holdco has the discretion to maintain Overlapping Records in either the United States or the home jurisdiction of one or more of the European Market Subsidiaries, Holdco is liable for any books and records it is required to produce for inspection and copying by the Commission that are created outside the United States and where the law of a foreign jurisdiction prohibits Holdco from providing such books and records to the Commission for inspection and copying. Moreover, the Commission notes that Deutsche Börse and NYSE Euronext, the two indirect entities currently controlling the U.S. Regulated Subsidiaries, are under existing obligations to make their books and records available in compliance with the requirements of Rule 17a–1(b).[74] The Commission notes that the respective obligations of NYSE Euronext and Deutsche Börse established in these prior orders remain in effect.[75] The

[63] The Commission believes that any non-regulatory use of such information would be for a commercial purpose.

[64] *See* Holdco Articles Section 3.2(h).

[65] *See* proposed Holdco Articles Section 3.2(e).

[66] *See* proposed Holdco Articles Section 3.2(g).

[67] *See id.*

[68] *See* proposed Holdco Articles, Section 3.2(f)(i) and (ii).

[69] *See* proposed Holdco Articles, Sections 3.2 (c) and (d).

[70] *See, e.g.,* Notice at 65293.

[71] *See, e.g.,* ISE Notice at 65250.

[72] 15 U.S.C. 78s.

[73] *See* proposed Holdco Articles, Section 36.2.

[74] *See Securities Exchange Act Release Nos. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) and 56955 (Dec. 13, 2007), 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101).*

[75] NYSE Euronext is currently required to maintain in the United States originals or copies of books and records that relate to both the NYSE U.S. Regulated Subsidiaries and its European market subsidiaries covered by Rule 17a–1(b) promptly after creation of such books and records. *See supra,* note 74, 72 FR 8041, 8042. The Commission notes that NYSE Euronext is liable for any books and records it is required to produce for inspection and copying by the Commission that are created outside the United States and where the law of a foreign jurisdiction prohibits NYSE Euronext from providing such books and records to the Commission for inspection and copying. *See supra,* note 75, 72 FR at 8041. If Deutsche Börse fails to make its books and records available to the Commission, the Commission could bring an action under, among other provisions, Section 17 of the

Continued

Commission also notes that the trusts established under the prior orders also remain in effect unchanged, other than revising the reference in the NYSE Euronext trust agreement (''NYSE Trust'') from the nominating and governance committee of NYSE Euronext to the nominating and governance committee of Holdco.[76] In addition, the Commission also notes that the 2007 Resolutions and Supplemental Resolutions remain in effect.

Under Section 20(a) of the Act,[77] any person with a controlling interest in the U.S. Regulated Subsidiaries shall be jointly and severally liable with and to the same extent that the U.S. Regulated Subsidiaries are liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act[78] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act[79] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to Holdco's dealings with the U.S. Regulated Subsidiaries.

C. Holdco Director Independence Policy

Under the Proposed Rule Change, Holdco would adopt the Holdco Independence Policy, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except that, in part, (i) a majority (as opposed to 75%) of the board of Holdco would be required to be independent; (ii) executive officers of listed companies would no longer be prohibited from being considered independent for purposes of the Holdco board; (iii) the ''additional independence requirements'' at the end of the current Independence Policy of NYSE Euronext, which provide that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated; (iv) the Holdco Independence Policy would not be applicable to NYSE Regulation, Inc., the Exchange, NYSE Amex or NYSE Market, which would have their own director independence policy; and (v) references to the independence standards and criteria in the Dutch Corporate Governance Code would be added, because such standards and criteria would apply to Holdco, a Dutch company, and would supplement (rather than supersede or limit) the other independence standards and criteria set forth in the Holdco Independence Policy.

The Commission finds that these proposals, taken together, are consistent with the Act, particularly Section 6(b)(1),[80] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act. The Commission notes that a majority of Holdco's Board would still need to be independent. In addition, the Commission notes that as a company listed on the Exchange, Holdco's board of directors must also satisfy the independence requirements applicable to a listed company's board of directors as contained in the Exchange's Listed Company Manual. Further, the Commission notes that there are requirements in Holdco's Independence Policy that independent directors may not be or have been within the last year, and may not have an immediate family member who is or within the last year was, a member of the Exchange, NYSE Arca or NYSE Amex.

D. Listing of Holdco's Securities

Holdco intends to list its shares of common stock for trading on the Exchange, and apply for admission of its shares to trading on the regulated market of the Frankfurt Stock Exchange and the regulated market segment of the Euronext Paris. Pursuant to NYSE Rule 497, any security of Holdco and its affiliates shall not be approved for listing on the Exchange unless NYSE Regulation determines that such securities satisfy the Exchange's rules for listing, and such finding is approved by the NYSE Regulation board of directors. The Commission finds that the proposed procedure for the initial listing of Holdco common stock is consistent with the Act.

NYSE Regulation will be responsible for all Exchange listing-compliance decisions with respect to Holdco as an issuer. NYSE Regulation will prepare a quarterly report, as described in Rule 497(c)(1) summarizing its monitoring of Holdco's compliance with such listing standards. This report will be provided to the NYSE Regulation board of directors and a copy will be forwarded promptly to the Commission. Once a year, an independent accounting firm will review Holdco's compliance with the Exchange's listing standards and a copy of its report will be forwarded promptly to the Commission. If NYSE Regulation determines that Holdco is not in compliance with any applicable listing standard of the Exchange, NYSE Regulation will notify Holdco promptly and request a plan for compliance. Within five business days of providing such notice to Holdco, NYSE Regulation will file a report with the Commission identifying the date on which Holdco is not in compliance with the listing standard at issue and any other material information conveyed to Holdco in the notice of non-compliance. Within five business days of receiving a plan of compliance from the issuer, NYSE Regulation will notify the Commission of such receipt, whether the plan was accepted by NYSE Regulation or what other action was taken with respect to the plan, and the time period provided to regain compliance with the Exchange's listing standard, if any. The Commission believes that the procedures for monitoring of the listing of and trading of Holdco's securities are consistent with the Act.

E. Options Trading Rights

The Commission received three similar comment letters[81] on the proposed rule changes regarding certain

Act and Rule 17a–1(b) thereunder against the DB U.S. Regulated Subsidiaries pursuant to Section 19(h) of the Act. *See supra,* note 75, 72 FR at 71984.

[76] The ISE Trust would hold capital stock of ISE Holdings in the event that a person obtains an ownership or voting interest in ISE Holdings in excess of the ownership voting limits set forth in ISE's corporate governance documents. In addition, the ISE Trust would hold capital stock of ISE Holdings in the event of a Material Compliance Event. A ''Material Compliance Event'' is defined under the ISE Trust agreement as any state of facts, development, event, circumstance, condition, occurrence, or effect that results in the failure of any of the non-U.S. Upstream Owners to adhere to its respective commitments under the Resolutions in any material respect. The Trust holds a call option over Holdings capital stock, which may be exercised if a Material Compliance Event has occurred and continues to be in effect. *See surpa,* note 75, 72 FR at 71984.

The NYSE Trust was created, in part, to take actions to mitigate the effects of any material adverse change in European law that has an ''extraterritorial'' impact on the non-European issuers listed on NYSE Group securities exchanges, non-European financial services firms that are members of any NYSE Group securities exchange, or any NYSE Group securities exchange. *See supra,* note 75, 72 FR at 8042.

[77] 15 U.S.C. 78t(a).

[78] 15 U.S.C. 78t(e).

[79] 15 U.S.C. 78u–3.

[80] 15 U.S.C. 78f(b)(1).

[81] *See* Rothlein Letters, *supra* note 5.

Option Trading Rights (''OTRs'') that were separated from full New York Stock Exchange, Inc.[82] seats (''Separated OTRs''). All New York Stock Exchange seat ownership (with or without OTRs) was extinguished in the 2006 demutualization of New York Stock Exchange, Inc.[83] Although the commenter takes no position on the merits of the Combination, the commenter opposes the Combination on the grounds that the Exchange does not fully own all of the assets being transferred. Specifically, the commenter contends that the owners of Separated OTRs retained their Separated OTRs, even after the New York Stock Exchange, Inc. exited the options business in 1997, with the expectation that their ownership of the Separated OTRs would afford them full rights to trade options under the auspices of New York Stock Exchange, Inc. or its successor entity. The commenter contends that such ownership gives a right to trade options on NYSE Market and NYSE Arca, and after the Combination, Euronext. The commenter refers to its comment letters in connection with the demutualization of New York Stock Exchange, Inc. in its merger with Archipelago as well as the combination of NYSE Group and Euronext N.V.[84] The commenter asked that reserves be put aside for the Exchange to meet its obligations to Separated OTR holders. The NYSE Response to Comments states that the issue of the rights of owners of Separated OTRs is not before the Commission in the context of the NYSE Exchanges' proposed rule filings and notes that the NYSE Exchanges are not proposing in their respective filings a change in the trading rights on the Exchange, NYSE Amex or NYSE Arca, respectively.[85]

The issue of the rights of owners of Separated OTRs is not before the Commission in the context of this rule filing. Pursuant to Section 19(b)(1) of the Act,[86] an SRO (such as NYSE) is required to file with the Commission any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO. Further, pursuant to Section 19(b)(2) of the Act,[87] the Commission shall approve a proposed rule change filed by an SRO 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 the SRO.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[88] that the proposed rule changes (SR–EDGA–2011–34; SR–EDGX–2011–33; SR–ISE–2011–69; SR–NYSE–2011–51; SR–NYSEAmex–2011–78; SR–NYSEArca–2011–72), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[89]

Kevin M. O'Neill,

Deputy Secretary.

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[82] New York Stock Exchange, Inc. is the predecessor entity to NYSE. *See* NYSE Inc.-Archipelago Merger Order, *supra* note 27.

[83] *See* NYSE Inc.-Archipelago Merger Order, *supra* note 27.

[84] *See* Rothlein Letters, *supra* note 5. The Commission notes that the commenter reiterated these points in its rebuttal to the NYSE Response to Comments, continuing to argue, in part, that it still retains an interest in certain trading rights and that the proposed rule changes do not comport with fair and equitable principles of trade. *See* Rothlein Rebuttal Letters, *supra* note 6.

[85] *See* NYSE Response to Comments, *supra* note 6.

[86] 15 U.S.C. 78s(b)(1).

[87] 15 U.S.C. 78s(b)(2).

[88] *Id.*

[89] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66170; File No. SR–ISE–2012–02]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

January 17, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 3, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

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

The ISE is proposing to amend its transaction fees and rebates for adding and removing liquidity. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange currently assesses per contract transaction fees and rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in 103 options classes (the ''Select Symbols'').[3] The purpose of this proposed rule change is to amend the list of Select Symbols on the Exchange's Schedule of Fees, titled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols and Complex Order Maker/Taker fees for symbols that are in the Penny Pilot Program'' in order to attract additional order flow to the Exchange. The Exchange is proposing to delete Market Vectors Semiconductor ETF (''SMH'') from the list of Select Symbols. With this proposed rule change, SMH will no longer be subject to the Exchange's maker/taker fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular,

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).