

FINRA clarify Question 14M on the Form U4 to remove any confusion regarding its scope.<sup>53</sup> In addition, the commenter stated that FINRA should clarify that it will not fine firms in instances where they did not treat a short sale as a compromise with creditors under Question 14K on the Form U4 prior to FINRA's guidance on the subject. In response, FINRA states it believes that these comments are outside the scope of the proposed rule change, and should be addressed in the context of changes to the Form U4 or its interpretations.

#### IV. Accelerated Approval

The Commission finds good cause to approve the proposed rule change, as amended by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The amendment responds to issues raised by commenters and makes minor modifications in response to the comments. Accelerated approval would allow FINRA to implement the amended proposal without delay. The proposal will provide firms with an incentive to determine if additional disclosures on Form U4 are required for their registered personnel, ultimately resulting in more complete and accurate information in WebCRD, and as a consequence in BrokerCheck. As noted by FINRA and the commenters, WebCRD is an important tool used by regulators, as well as the public to get information about registered persons with whom they may wish to do business. Therefore, implementing the proposal without delay is in the public interest. Accordingly, the Commission believes that good cause exists, pursuant to Section 19(b)(2) of the Act,<sup>54</sup> to approve the proposed rule change, as amended by Amendment No. 1, on an accelerated basis.

#### V. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2014-038 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2014-038. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2014-038 and should be submitted on or before January 27, 2015.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2)<sup>55</sup> of the Act, that the proposed rule change (SR-FINRA-2014-038) be and hereby is approved, as amended, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>56</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73963; File No. SR-NYSEArca-2014-141]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Bylaws of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc., To Designate Its Chief Strategic Officer, Chief Technology Officer and General Counsel as "Senior Officers" of ICE

December 30, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 29, 2014, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Bylaws (the "ICE Bylaws") of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. ("ICE"), to designate its Chief Strategic Officer, Chief Technology Officer and General Counsel as "Senior Officers" of ICE. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

<sup>53</sup> See FSI Letter.

<sup>54</sup> 15 U.S.C. 78s(b)(2).

<sup>55</sup> *Id.*

<sup>56</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

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

1. Purpose

The Exchange seeks approval for its ultimate parent entity ICE<sup>3</sup> to amend the ICE Bylaws to designate its Chief Strategic Officer, Chief Technology Officer and General Counsel (each, a "Designated Officer" and together, the "Designated Officers") as "Senior Officers" of ICE. Each Designated Officer was a Senior Officer under the ICE Bylaws prior to the acquisition by ICE of NYSE Euronext in 2013 because each also was a Senior Vice President. Under the ICE Bylaws, all Senior Vice Presidents are Senior Officers. As Senior Officers, the Designated Officers were entitled under Article X, Section 10.6 of the ICE Bylaws to indemnification by ICE against certain actions, suits and proceedings.

Upon consummation of the acquisition of NYSE Euronext, the three titles were streamlined and the term "Senior Vice President" was eliminated. Specifically, the officer whose former title was "Senior Vice President, Chief Strategic Officer" is now "Chief Strategic Officer"; the officer whose former title was "Senior Vice President, Chief Technology Officer" is now "Chief Technology Officer"; and the officer whose title was formerly "Senior Vice President, General Counsel" is now "General Counsel". The proposed amendment to the ICE Bylaws would assure that the Designated Officers continue to be identified as "Senior Officers" of ICE and therefore eligible for indemnification under Article X, Section 10.6 of the ICE Bylaws. The proposed rule change would not extend the indemnification provisions of the ICE Bylaws to any officers that were not historically indemnified nor would it alter the scope of the indemnity provided.<sup>4</sup>

Under the proposed amendment, Section 5.1 of the ICE Bylaws would be amended to identify by title additional officers that the board of directors may choose, specifically a Chief Strategic

Officer, a Chief Technology Officer and a General Counsel (the "Designated Officers"). Section 5.1 would also be amended to expand the definition of the term "Senior Officer" to include the Designated Officers and any other officer designated a "Senior Officer" by the Board or the Compensation Committee of the Board from time to time in its sole discretion. The amendments also would provide that any employee deemed an officer of the Corporation under Section 16 of the Exchange Act<sup>5</sup> will be deemed a Senior Officer for purposes of the Bylaws.<sup>6</sup>

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) of the Exchange Act,<sup>7</sup> in general, and Section 6(b)(5) of the Exchange Act,<sup>8</sup> in particular, because the proposed rule change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The clarification of the right to indemnification will enhance the ability of the Designated Officers to carry out their responsibilities as officers of ICE, including their responsibilities under the Exchange Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue in the U.S. or European securities markets or have any impact on competition in those markets; rather, the clarification of the right to indemnification will enhance the ability of the Designated Officers to carry out their responsibilities as such, including

their responsibilities under the Exchange Act.

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the clarification of the right to indemnification may enhance the ability of the relevant officers of ICE to carry out their responsibilities as such, including their responsibilities under the Exchange Act, without delay. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>14</sup>

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing requirement in this case.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the

<sup>3</sup> ICE owns 100% of the equity interest in ICE Holdings, Inc. ("ICE Holdings"), which in turn owns 100% of the equity interest in NYSE Holdings, LLC ("NYSE Holdings"). NYSE Holdings owns 100% of the equity interest of NYSE Group, Inc., which in turn directly or indirectly owns 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations—the Exchange, the New York Stock Exchange, LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT").

<sup>4</sup> The Exchange's affiliates the NYSE and NYSE MKT have also submitted the same proposed rule filing in connection with the ICE Bylaw amendment.

<sup>5</sup> 15 U.S.C. 78p.

<sup>6</sup> A copy of the proposed amendment to the ICE Bylaws is attached as Exhibit 5A. An extract from the resolutions adopted by the ICE board of directors on February 28, 2014 authorizing the proposed amendment is attached as Exhibit 5B.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2014-141 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2014-141. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSEArca-2014-141, and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73954; File No. SR-FINRA-2014-037]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to FINRA Rules 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation) and 2040 (Payments to Unregistered Persons) in the Consolidated FINRA Rulebook, and Amend FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar)**

December 30, 2014.

#### **I. Introduction**

On September 10, 2014, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to streamline provisions of NASD Rule 2410 (Net Prices to Persons Not in Investment Banking or Securities Business), NASD Rule 2420 (Dealing with Non-Members), NASD IM-2420-1 (Transactions Between Members and Non-Members), NASD IM-2420-2 (Continuing Commissions Policy), Incorporated NYSE Rule 353 (Rebates and Compensation), Incorporated NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons) and Incorporated NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations), which would be deleted from the current FINRA rulebook. The

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

proposed rule change would also adopt the requirements of NASD Rule 1060(b) (Persons Exempt from Registration) and Incorporated NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders), as FINRA Rule 2040(c) (Nonregistered Foreign Finders) in the consolidated FINRA rulebook without material change. In addition, the proposed rule change would amend FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar), add new Supplementary Material .01 (Remuneration Accrued Prior to Effective Date of Sanction or Disqualification), and adopt the requirements of NASD IM-2420-1(a) (Non-members of the Association), as FINRA Rule 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation).

The proposed rule change was published for comment in the **Federal Register** on October 1, 2014.<sup>3</sup> The Commission received seven comment letters in response to the Notice of Filing.<sup>4</sup> On November 10, 2014, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to December 30, 2014.<sup>5</sup> On December 23,

<sup>3</sup> Exchange Act Release No. 73210 (Sept. 25, 2014), 79 FR 59322 (Oct. 1, 2014) (Notice of Filing of a Proposed Rule Change to Adopt FINRA Rules 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation) and 2040 (Payments to Unregistered Persons) in the Consolidated FINRA Rulebook, and Amend FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar)) ("Notice of Filing"). The comment period closed on October 22, 2014.

<sup>4</sup> William A. Jacobson, Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic (Oct. 17, 2014) ("Cornell"); Peter J. Chepucavage, Esq., GC Plexus Consulting Group (Oct. 21, 2014) ("Plexus"); William Beatty, President, North American Securities Administrators Association and Washington Securities Commissioner (Oct. 22, 2014) ("NASAA"); Howard Spindel, Senior Managing Director, and Cassandra E. Joseph, Managing Director, Integrated Management Solutions USA LLC (Oct. 22, 2014) ("IMS"); Paul J. Tolley, Senior Vice President, Chief Compliance Officer, Commonwealth Financial Network (Oct. 22, 2014) ("Commonwealth"); Kevin Zambrowicz, Associate General Counsel & Managing Director, Securities Industry and Financial Markets Association (Oct. 22, 2014) ("SIFMA"); and Catherine T. Dixon, Chair, Federal Regulation of Securities Committee, Business Law Section, American Bar Association (Nov. 5, 2014) ("ABA").

<sup>5</sup> Letter from Kosha K. Dalal, Associate Vice President and Associate General Counsel, FINRA to Katherine England, Assistant Director, Division of Trading and Markets, Securities and Exchange Commission, dated Nov. 10, 2014.