

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

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments it receives.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(C)<sup>5</sup> of the Act, which requires that the rules of a clearing agency assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. In approving the Integration Filing, the Commission found that the proposed rule change was consistent with section 17A(b)(3)(C). Because this proposed rule change merely makes changes to EMCC's rules to conform them to the changes made in the Integration Filing, the Commission also finds this proposed rule change to be consistent with section 17A(b)(3)(C).

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow EMCC to immediately conform its rule to its current corporate governance structure which should help to avoid confusion among participants.

**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. Persons making written submissions should file six copies thereof with the Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-6069. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File No. SR-EMCC-2002-02 and should be submitted by April 5, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-2002-02) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45522; File No. SR-ISE-2002-04]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC, Relating to the Status of Market Makers**

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 11, 2002, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The ISE proposes to amend its rules to clarify that its market makers are specialists for all purposes under the Act.

<sup>6</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.

**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 ISE 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 ISE 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 term "specialist" includes any market maker deemed to be or treated as a specialist for purposes of the Act by an exchange.<sup>3</sup> The purpose of this proposed rule change is to specify in the Exchange's rules that ISE market makers are deemed to be specialists under the Act.

**2. Statutory Basis**

The ISE believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular, in that it is designed, among other things, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest.

*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.

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

Written comments were neither solicited nor received.

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

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to

<sup>3</sup> See, e.g., Exchange Act Release No. 17574 (Feb. 25, 1981), 46 FR 15134 (Mar. 4, 1981). See also Rule 8.1 of the Chicago Board Options Exchange; Rule 958.01(a) of the American Stock Exchange; Rule 1014.01 of the Philadelphia Stock Exchange; and Rule 6.32 of the Pacific Exchange.

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(C).

section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after February 11, 2002, the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A)(iii)<sup>8</sup> of the Act and Rule 19b-4(f)(6)<sup>9</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2002-04 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45529; File No. SR-ISE-2002-01]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange LLC Proposal to Restructure From a Limited Liability Company to a Corporation

March 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 11, 2002, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on March 5, 2002.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The International Securities Exchange LLC ("Old ISE") proposes to restructure from a limited liability company to a corporation, New ISE, (with the on-

<sup>10</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.

<sup>3</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 4, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange expanded the concentration limits regarding ownership of the Class A Common Stock of its proposed corporation, International Securities Exchange, Inc. ("New ISE"). Specifically, the Exchange amended the proposed rule change to include a general prohibition on the voting rights with respect to stock that a person owns above a 20 percent ceiling. However, the Exchange states that its Board of Directors ("Board") would be able to exempt a person from the voting limit if such an exemption generally would be consistent with the Exchange's self-regulatory responsibilities. The Board would not be able to grant an exemption to: members; their affiliates; or persons subject to a statutory disqualification. In addition, Amendment No. 1 specifies that any "poison pill" New ISE adopts will be subject to prior Commission approval.

going business of both Old ISE and New ISE referred to collectively as "ISE" or the "Exchange") and to "demutualize" by separating the equity interest in the Exchange from members' trading rights. The text of the proposed rule change consists of: (1) A new Certificate of Incorporation; (2) a new Constitution; and (3) amendments to the Exchange's Rules. In addition, the Exchange has adopted the following interpretation of its Rules:

Upon reorganization, the Exchange would be a Delaware corporation. Pursuant to Paragraph (a)(ii) of section II of the Exchange's Certificate of Incorporation, the holders of the Exchange's Class A Common Stock "would be entitled to receive, when and if declared by the Board of Directors, out of the assets of [New ISE] which are by law available therefor, dividends payable either in cash, in stock or otherwise." The Exchange states its policy is that any revenues it receives from regulatory fees or regulatory penalties: would be segregated; would be applied to fund the legal, regulatory and surveillance operations of the Exchange; and would not be used to pay dividends to the holders of the Class A Common Stock.

The text of the proposed rule change is available for inspection at the Office of the Secretary, the ISE, the Commission's Public Reference Room, and on the Commission's Internet Web site (<http://www.sec.gov>).

#### 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 Exchange 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 Exchange 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 ISE is currently structured as a limited liability company ("LLC"), in which memberships encompass both trading rights and equity ownership. The Exchange states that the purpose of this proposed rule change is to restructure the company into a corporation, in which trading rights are separated from equity ownership. Except as specified below, the Exchange represents that these changes do not

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).