

section 19(b)(3)(A)(iii) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷ 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)⁸ of the Act and Rule 19b-4(f)(6)⁹ 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.¹⁰

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"),¹ and Rule 19b-4 thereunder,² 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, 2002.³ 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-

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

affect the manner of the Exchange's operations or governance structure. The three documents that would accomplish the restructuring and demutualization of the Exchange, and that encompass this rule change, are as follows:

- **Certificate of Incorporation:** This is the basic corporate document and replaces Old ISE's current LLC Operating Agreement.
- **Constitution and By-Laws:** This document replaces Old ISE's Constitution.
- **Amended rules:** These proposed rule changes reflect the changes to the Certificate and Constitution. Most changes are non-substantive and reflect changes to "membership" terminology required by the demutualization. In particular, the applicability of various rules to "owners" of shares and to "Members" of the Exchange, which are broker-dealers that have been approved to exercise trading privileges on the Exchange, has been clarified.

Overview of the Restructuring and Demutualization

The Exchange would convert into a Delaware stockholder corporation through a merger of Old ISE with New ISE, its newly-formed subsidiary; the members of Old ISE would become stockholders of New ISE. Memberships in Old ISE would convert into shares of New ISE Class A Common Stock, par value \$.01 per share (the "Class A Common Stock"), and shares of New ISE Class B Common Stock, par value \$.01 per share (the "Class B Common Stock"). Other than the nominal par value of the Class B Common Stock, the Class A Common Stock would constitute all of the equity in New ISE. New ISE may issue classes of preferred stock in the future, the terms of which would be defined by the Board and filed with the Commission for approval.

The Class B Common Stock would confer upon holders trading privileges and specified voting rights associated with the memberships in Old ISE. The Class B shares would be issued in three series corresponding with the existing membership types. Each series of Class B Common Stock would confer the same trading privileges associated with the membership interest that is converted into such series, and would be distributed as follows:

- Each Class A Membership Interest (Primary Market Maker ("PMM") Members) would receive one share of Class B Common Stock, Series B-1 (the "Series B-1 Stock");
- Each Class B Membership Interest (Competitive Market Maker ("CMM") Members) would receive one share of

Class B Common Stock, Series B-2 (the "Series B-2 Stock"); and

- Each Class C Membership Interest (Electronic Access Members ("EAM")) would receive one share of Class B Common Stock, Series B-3 (the "Series B-3 Stock").

Description of New ISE Stock

Class B Common Stock

As discussed below, the holders of the Class B Common Stock would have the right to elect six members of New ISE's Board of Directors. In addition, Series B-1 Stock holders and Series B-2 Stock holders would have voting rights with respect to actions affecting the number of issued shares of Series B-1 Stock and Series B-2 Stock (the "Core Rights"). A vote with respect to a Core Right would require the majority approval of the Series B-1 holders, voting as a separate class, and the Series B-2 holders, voting as a separate class. This replicates the voting provisions of Old ISE.

A holder of Class B Common Stock, together with any affiliate, may not own more than 20% of Series B-1 Stock or Series B-2 Stock. ISE Founders⁴ would have a temporary exemption, not to extend past May 26, 2010, from the ownership concentration limits. Founders, however, would have no voting rights, other than a vote related to Core Rights, for any shares in excess of 20% of the Series B-1 Stock or 20% of the Series B-2 Stock.

The holders of Class B Common Stock would not have the right to receive any dividends. Upon liquidation of New ISE, holders of each series of Class B Common Stock would be entitled to receive a liquidation amount equal to the par value of the shares of Class B Common Stock (\$0.01 per share). The shares of Series B-1 and B-2 Common Stock may be transferred only with approval of the Exchange, as is currently required with respect to PMM and CMM memberships. As with current EAM memberships, the shares of Series B-3 Stock would be non-transferable. In the event an EAM withdraws from trading, New ISE would buy back its share of B-3 Stock at par value.

Class A Common Stock

As discussed below, the holders of shares of Class A Common Stock would have the right to elect nine members of the Board of Directors of New ISE. The holders of the Class A Common Stock

also would have the right to vote on any matter that requires a vote of the stockholders of New ISE, other than votes with respect to the Core Rights. Upon liquidation of New ISE, the holders of Class B Common Stock receive the par value of their stock and the holders of Class A Common Stock receive all residual amounts, subject to the rights of any classes of preferred shares.

If a holder of Class A Common Stock, together with any affiliate, owns more than 20% of the Class A Common Stock, the holder would have no voting rights for shares owned in excess of the 20% concentration limit. The New ISE Board, however, may approve an exemption to this prohibition for any person other than a New ISE member, an affiliate of a New ISE member, or a person subject to a statutory disqualification under section 3(a)(3) of the Act,⁵ if the Board determines that such an exemption generally would be consistent with the New ISE's self-regulatory responsibilities. ISE Founders would have a temporary exemption, not to extend past May 26, 2010, from the voting limitation on Class A Common Stock shares owned in excess of 20%, but only with respect to any vote regarding any merger, consolidation, or dissolution of the New ISE or any sale of all or substantially all of the assets of the New ISE.

The holders of shares of Class A Common Stock would be entitled to receive dividends, when and if declared by the Board of Directors. Prior to its registration as a national securities exchange, the ISE adopted an interpretation restricting the ISE from paying dividends out of revenues received from regulatory fees or regulatory penalties.⁶ The ISE proposes a similar interpretation to apply the same restrictions to New ISE.

Election of Board of Directors

The size and composition of the Board of Directors of New ISE would remain the same following the demutualization. The Board would be comprised of 15 directors, and initially would consist of the current Board of Old ISE. In future elections, the holders of the Class B Common Stock would elect six directors: Two directors elected by the holders of Series B-1 Stock; two directors elected by the holders of Series B-2 Stock; and two directors elected by the holders of Series B-3 Stock.

⁴ As defined in the New ISE Constitution, the term "Founder" means a person or entity that purchased the former Class A or Class B Memberships directly from the Exchange on or prior to August 1, 1998, but only with respect to his or its ownership of such memberships.

⁵ 15 U.S.C. 78c(a)(3).

⁶ File No. 10-127, Amendment No. 2 (Letter from David Krell, President and Chief Executive Officer, ISE, to Jonathan G. Katz, Secretary, Commission, dated February 17, 2000).

The holders of the Class A Common Stock would elect nine directors: Eight non-industry directors (including at least two who would be public representatives) and the Chief Executive Officer. As opposed to the current structure, PMMs, CMMs, and EAMs would have the right to vote for the non-industry directors only to the extent they own Class A Common Stock. The Exchange believes that retaining members' rights to elect six directors fully complies with the statutory requirement that the ISE "assure a fair representation of its members in the selection of its directors. * * *."⁷

Currently, the Exchange has a single nominating committee, consisting of both industry and non-industry members, that nominates all candidates for election to the Board. Consistent with the new election structure, a nominating committee consisting of representatives of holders of the Series B Common Stock would select the nominees for Series B directors, and the non-industry directors on the Board would select the nominees for non-industry directors. Holders of the appropriate classes of common stock also would be able to nominate rival candidates for the Board.

Trading Privileges on the Exchange

The holders of each series of Class B Common Stock would have the same trading privileges they currently hold as PMMs, CMMs, and EAMs. The proposed rules of New ISE do not change any trading privileges. According to the Exchange, virtually all of the proposed changes are intended simply to conform the rules to the new Certificate of Incorporation and Constitution.

Transfer of Memberships

In filing number SR-ISE-2001-24, the Exchange proposed changes to the process by which members could transfer memberships. Concurrently with submitting the current filing, the ISE is withdrawing SR-ISE-2001-24 and including the substantive provisions of that filing in the Rules of New ISE. These changes update the Exchange's rules relating to the sale, transfer, and lease of market maker memberships. In particular, these changes eliminate the bid/offer system of selling these memberships and eliminate the claims process and deposit requirements for sales, transfer, and leases.⁸

Current ISE Rules provide that market maker memberships generally must be sold through a bid and offer system. Given its experience to date, the Exchange believes that the bid/offer system is not compatible with the unique structure of its market maker memberships. The PMM and CMM memberships are assigned to particular bins. In contrast to memberships on other exchanges, these memberships are not fungible with memberships outside those bins. In addition, there are relatively few memberships within each bin (1 PMM and 10 CMMs), rendering a bid/offer system limited to bin and class impractical. The Exchange proposes instead to allow members to negotiate their own purchases and sales, subject to the purchase or transfer agreement being filed with, and approved by, the Exchange. As a convenience, the Exchange would maintain a "bulletin board" for members to list memberships for sale, but use of that facility would be voluntary.

Currently, the Rules require the Exchange to hold proceeds from sales made pursuant to the bid/offer system for 20 days, during which time claims against the proceeds may be made. Similarly, under the lease provisions contained in the Exchange's current rules, a deposit is required prior to the lease becoming effective, to be applied at the beginning and the end of the lease term to satisfy the claims process. The Exchange proposes to remove the claims process and deposit requirements. These modifications would eliminate a significant administrative burden on the Exchange, Clearing Members, and other members that is a byproduct of the current membership claims process. As exists currently, Members can still pursue claims against other Members through the arbitration process.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under section 6(b)(5) of the Act⁹ that an exchange have rules that are 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 transaction in securities, 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange did not solicit or receive written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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, as amended, 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 in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-2002-01 and should be submitted by April 5, 2002.

⁷ Section 6(b)(3) of the Act. 15 U.S.C. 78f(b)(3).

⁸ The Exchange also proposes to change the terminology used in these Rules to reflect the fact that the sale or transfer of market maker trading

rights will be accomplished by the sale or transfer of the appropriate share of Series B-1 or Series B-2 Class B Common Stock.

⁹ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45531; File No. SR-NASD-2002-05]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Revisions to Form U-4 and Form U-5

March 11, 2002.

On January 9, 2002, the National Association of Securities Dealers, Inc. ("NASD" or the "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change revising the Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and Uniform Termination Notice for Securities Industry Registration ("Form U-5") (collectively, the "Forms"). On January 23, 2002, NASD Regulation submitted Amendment No. 1 to the proposed rule change.³ On January 31, 2002, NASD Regulation submitted Amendment No. 2 to the proposed rule change.⁴ On February 28, 2002, NASD Regulation submitted Amendment No. 3 to the proposed rule change.⁵

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 7,

2002.⁶ The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder,⁷ and, in particular, the requirements of Section 15A of the Act⁸ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(6) of the Act.⁹ Section 15A(b)(6)¹⁰ requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change promotes the objectives of this section of the Act. Specifically, the proposed rule change will accomplish these ends by making technical changes to the Forms to accommodate the electronic submission of investment adviser filings on the Investment Adviser Registration Depository ("IARD") system; establishing procedures that will enable broker/dealer firms and investment adviser firms employing dually registered persons to concur with information contained in the Forms; making certain formatting and technical changes to the Forms that would complete the transition from a paper-based filing model to an electronic-filing model; providing separate paper filing instructions for those filers that do not use the CRD or IARD systems; clarifying certain items that have been a source of confusion for Web CRD users; and updating the Form U-4 to add examination and registration categories that were not previously included. The proposed rule change also amends NASD IM-8310-2, Release of Disciplinary Information, to refer to the newly numbered Item 14 of the Form U-4.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-NASD-2002-05) be, and it hereby is, approved.

⁶ See Securities Exchange Act Release No. 45385 (February 1, 2002), 67 FR 5862.

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ *Id.*

¹¹ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45521; File No. SR-NYSE-99-51]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Requirements for Order Tracking by Exchange Members and Member Organizations

March 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 27, 2002, the New York Stock Exchange, Inc. ("NYSE" 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 NYSE. On May 24, 2000, the Exchange filed Amendment No. 1 to the proposal.³ On August 14, 2001, the Exchange filed Amendment No. 2 to the proposal.⁴ On January 17, 2002, the Exchange filed Amendment No. 3 to the proposal.⁵ The

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jennifer Colihan, Attorney, Division of Market Regulation ("Division"), Commission, dated May 22, 2000 ("Amendment No. 1"). In Amendment No. 1, the Exchange deleted the phrase "or execution" from proposed Rule 132B(a)(1)(C) as unnecessary for application of the Rule.

⁴ See Letter from Darla C. Stuckey, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 14, 2001 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposed to: (1) amend Rule 123 by adding proposed paragraph (f) which would set forth the details required to be recorded of each execution report, including a unique order identifier, and (2) amend Rule 132.30 by deleting 132.30(10), which would have required a unique order identifier be added to the data elements in post trade processing. The Exchange represents that this change will ensure that a unique order identifier will be attached throughout the life of an order, thus simplifying the tracking process.

⁵ See Letter from Darla Stuckey, Corporate Secretary, NYSE, to Belinda Blaine, Associate Director, Division, Commission, dated January 17, 2002 ("Amendment No. 3"). In Amendment No. 3, the Exchange explained that it did not believe that it was cost-effective to store all order tracking data collected from members on a daily basis, and

Continued

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated January 22, 2002 ("Amendment No. 1").

⁴ See letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, SEC, dated January 31, 2002 ("Amendment No. 2").

⁵ See letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, SEC, dated February 27, 2002 ("Amendment No. 3"). In Amendment No. 3, NASD Regulation made various technical corrections to the proposed language changes to Form U-4 and Form U-5.