

**ISE GEMINI, LLC**  
60 Broad Street  
New York, NY 10004

June 13, 2016

**Via E-mail**

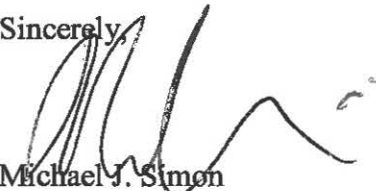
Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549-1090

**Re: Securities Exchange Act Rel. 34-77795 (SR-ISE Gemini-2016-05)**

Dear Mr. Fields,

ISE Gemini, LLC filed the attached Partial Amendment No. 1 to the above-referenced filing on June 10, 2016.

Sincerely,



Michael J. Simon  
General Counsel, Secretary and Chief Regulatory Officer

Enclosures (Partial Amendment No. 1 to SR-ISE Gemini-2016-05)

Required fields are shown with yellow backgrounds and asterisks.

Filing by ISE Gemini, LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Sun      Last Name \* Kim

Title \* Assistant General Counsel

E-mail \* [REDACTED]

Telephone \* [REDACTED]      Fax [REDACTED]

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 06/10/2016      Secretary and General Counsel

By Michael Simon      [REDACTED]

(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1443109051649,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

File No. SR-ISEGemini-2016-05, Partial Amendment No. 1

### Introduction

ISE Gemini, LLC (the “Exchange” or “ISE Gemini”) submits this Partial Amendment No. 1 to the above-referenced proposed rule change (the “Original Proposal”), which was originally submitted to the Securities and Exchange Commission (“Commission”) on April 28, 2016.<sup>1</sup> The Original Proposal relates to a proposed business transaction (the “Transaction”) involving the Exchange’s ultimate, indirect, non-U.S. upstream owners, Deutsche Börse AG (“Deutsche Börse”) and Eurex Frankfurt AG, and Nasdaq, Inc. (“Nasdaq”). In this Partial Amendment 1, the Exchange proposes the changes described below with respect to the Original Proposal.

### Discussion

The Exchange proposes the following changes with respect to the International Securities Exchange Holdings, Inc. (“ISE Holdings”) Second Amended and Restated Certificate of Incorporation (“ISE Holdings COI”), as provided in Exhibit 5E attached hereto, which replaces Exhibit 5E from the Original Proposal in its entirety.

First, the Exchange proposes to replace the current “Ownership Limits” and “Voting Limits” in Section III(a) and (b) of Article FOURTH of the ISE Holdings COI, as follows:

- For so long as ISE Holdings shall control, directly or indirectly, one or more national securities exchange (each, a “Controlled National Securities Exchange”), including, but not limited to, the Exchange or a facility thereof, all authorized shares of capital stock of ISE Holdings (whether common stock or preferred stock) that are issued and outstanding shall be held by U.S. Exchange Holdings, Inc. (“U.S. Exchange Holdings”). U.S. Exchange Holdings may not transfer or assign any shares of capital stock of ISE Holdings (whether common stock or preferred stock), in whole or in part, to any Person,<sup>2</sup> unless such transfer or assignment is filed with, or

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<sup>1</sup> See Securities Exchange Act Release No. 77795 (May 10, 2016), 81 FR 30386 (May 16, 2016) (SR-ISEGemini-2016-05). The Exchange’s current affiliates, International Securities Exchange, LLC (“ISE”) and ISE Mercury, LLC (“ISE Mercury”), submitted nearly identical proposed rule changes. See Securities Exchange Act Release Nos. 77794 (May 10, 2016), 81 FR 30351 (May 16, 2016) (SR-ISE-2016-11); and 77796 (May 10, 2016), 81 FR 30403 (May 16, 2016) (SR-ISEMercury-2016-10). ISE and ISE Mercury have also proposed nearly identical partial amendments to their respective proposed rule changes.

<sup>2</sup> As used in the ISE Holdings COI, the term “Person” means an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

filed with and approved by, the Commission, as the case may be, under Section 19 of the Securities Exchange Act of 1934, as amended (“Act”) and the rules promulgated thereunder.

- For so long as ISE Holdings shall control, directly or indirectly, one or more Controlled National Securities Exchanges or a facility thereof, U.S. Exchange Holdings shall be entitled to vote or cause the voting of all authorized shares of capital stock of ISE Holdings (whether common stock or preferred stock) that are issued and outstanding. U.S. Exchange Holdings may not transfer or assign any voting rights with respect to the shares of capital stock of ISE Holdings (whether common stock or preferred stock), in whole or in part, to any Person, unless such transfer or assignment is filed with, or filed with and approved by, the Commission, as the case may be, under Section 19 of the Act and the rules promulgated thereunder.

Second, and as a result of the above, the Exchange proposes to delete the text of current Section III(a)(i)(x) and (y) that describes the current Ownership Limits, as well as the text of current Section III(b)(i) of Article FOURTH of the ISE Holdings COI that describes the current Voting Limits. The Exchange also proposes the following, related deletions from Article FOURTH of the ISE Holdings COI: (i) the text of current Section III(a)(ii) and (iii), which would cease to be relevant in light of the proposed replacement of the Ownership Limits; (ii) the references to “Ownership Percentage” from current Section III(a)(i)(B), (D) and (E), given the requirement proposed herein that all issued and outstanding shares of capital stock of ISE Holdings be held by U.S. Exchange Holdings; and (iii) the references to “Voting Control Percentage” from current Section III(b)(i) and (iii), which would cease to be relevant given the requirement proposed herein that U.S. Exchange Holdings shall be entitled to vote or cause the voting of all authorized shares of capital stock of ISE Holdings that are issued and outstanding.

Third, the Exchange proposed in the Original Proposal that it would amend the ISE Holdings COI to reinstate certain text that existed prior to Deutsche Börse’s ownership of ISE Holdings, including relating to the “Charitable Trust” that previously was contemplated. The Exchange no longer proposes to reinstate such text, which was identified as underlined, new text in Exhibit 5E of the Original Proposal in the following sections of Article FOURTH of the ISE Holdings COI:<sup>3</sup>

- Proposed, new Section III(b)(iii);
- Section III(c);
- Proposed, new Section III(c)(i);
- Proposed, renumbered Section III(c)(ii);
- Proposed, renumbered Section III(c)(iii);

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<sup>3</sup> The Exchange no longer proposes any of the renumbering of subsections of Section III of Article FOURTH of the ISE Holdings COI that was proposed in the Original Proposal.

- Proposed, renumbered Section III(c)(iv);
- Proposed, renumbered Section III(c)(v);
- Proposed, renumbered Section III(c)(vi);
- Proposed, new Section III(c)(vii); and
- The proposed definitions at the end of Section III.

Fourth, the majority of text referenced in the bullets above had been proposed in the Original Proposal within current Section III(c) of Article FOURTH of the ISE Holdings COI. As a result, and in conjunction with the Original Proposal, as of and after the Transaction neither the current “ISE Trust” nor the “Charitable Trust” would exist.<sup>4</sup> The concept of “Excess Shares” also would no longer be relevant, given the proposed, new Ownership Limits and Voting Limits. The Exchange therefore proposes to delete current Section III(c) of Article FOURTH in its entirety.

The Exchange proposes the following changes with respect to the U.S. Exchange Holdings Certificate of Incorporation (“U.S. Exchange Holdings COI”), as provided in Exhibit 5F attached hereto, which replaces Exhibit 5F from the Original Proposal in its entirety.

First, the Exchange proposes to implement ownership limits and voting limits in the U.S. Exchange Holdings COI with respect to the stock of U.S. Exchange Holdings, consistent with the Ownership Limits and Voting Limits proposed herein with respect to the ISE Holdings capital stock, as follows:<sup>5</sup>

- As provided within proposed, new Article THIRTEENTH(ii), for so long as U.S. Exchange Holdings shall control, directly or indirectly, one or more Controlled National Securities Exchange or a facility thereof, all authorized shares of stock of U.S. Exchange Holdings that are issued and outstanding shall be held by Nasdaq. Nasdaq may not transfer or assign any shares of stock of U.S. Exchange Holdings, in whole or in part, to any Person,<sup>6</sup> unless such transfer or assignment is filed with, or filed with and approved by, the Commission, as the case may be, under Section 19 of the Act and the rules promulgated thereunder.

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<sup>4</sup> The Exchange proposes to renumber current Section III(d) of Article FOURTH of the ISE Holdings COI as Section III(c) of Article FOURTH. The Exchange proposes to relocate the current definition of “Voting Shares,” from current Section III(a)(i) of Article FOURTH to the introductory paragraph of Section III of Article FOURTH.

<sup>5</sup> The Exchange proposes to renumber the existing text of Article THIRTEENTH as Article THIRTEENTH(i).

<sup>6</sup> As used in the U.S. Exchange Holdings COI, the term “Person” means an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

- As provided within proposed, new Article THIRTEENTH(iii), for so long as U.S. Exchange Holdings shall control, directly or indirectly, one or more Controlled National Securities Exchange or a facility thereof, Nasdaq shall be entitled to vote or cause the voting of all authorized shares of stock of U.S. Exchange Holdings that are issued and outstanding. Nasdaq may not transfer or assign any voting rights with respect to the stock of U.S. Exchange Holdings, in whole or in part, to any Person, unless such transfer or assignment is filed with, or filed with and approved by, the Commission, as the case may be, under Section 19 of the Act and the rules promulgated thereunder.

Second, and as a result of the above, the Exchange proposes to delete the remaining, current text of Article THIRTEENTH of the U.S. Exchange Holdings COI, which currently relates to notice being provided by U.S. Exchange Holdings, to the Board of the Exchange and to the “ISE Trust,” in the event that any Person becomes the beneficial owner of 10%, 15%, 20%, 25%, 30%, 35%, or 40% or more of the then outstanding shares in U.S. Exchange Holdings. Such notice requirement would no longer be relevant, given that any change in ownership of U.S. Exchange Holdings would be subject to a rule filing with the Commission pursuant to Section 19 of the Act and the rules thereunder.

The Exchange proposes to add new Exhibit 5H, which is attached hereto, to amend existing Exchange Rule 309 (Limitation on Affiliation between the Exchange and Members) to provide that no Exchange Member or person associated with an Exchange Member shall be the beneficial owner, directly or indirectly, of greater than 20% of the (i) then-outstanding voting Limited Liability Company Interest of the Exchange, or (ii) the then-outstanding voting securities of Nasdaq. Any calculation of the voting Limited Liability Company Interest of the Exchange outstanding at any particular time shall be made in accordance with the last sentence of SEC Rule 13d-3(d)(1)(i)(D). The term “beneficially owned,” including all derivative or similar words, would have the meaning set forth in the Amended and Restated Certificate of Incorporation of Nasdaq. The Exchange also proposes to delete certain existing text of Rule 309 that provides that nothing in Rule 309 shall prohibit a Member from acquiring or holding any equity interest in ISE Holdings that is permitted by the ISE Holdings COI. This text is no longer relevant, given the proposal herein that U.S. Exchange Holdings shall hold all authorized shares of capital stock of ISE Holdings.

No other changes to the Original Proposal or the Exhibits thereto are proposed herein.

#### Statutory Basis

The Exchange believes that this Partial Amendment 1 is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(1) of the Act<sup>8</sup> and Section

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

6(b)(5) of the Act.<sup>9</sup> In particular, this Partial Amendment 1 enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. This Partial Amendment 1 also is consistent with the requirements that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

First, as of the closing of the Transaction, the Exchange will be a wholly-owned subsidiary of ISE Holdings, which in turn will be a wholly-owned subsidiary of U.S. Exchange Holdings, which in turn will be a wholly-owned subsidiary of Nasdaq. Nasdaq is the parent company of The NASDAQ Stock Market LLC (“NASDAQ Exchange”), NASDAQ PHLX LLC (“Phlx Exchange”), NASDAQ BX, Inc. (“BX Exchange”), which, like the Exchange, are registered as national securities exchanges. The Exchange believes that it is consistent with the Act to replace the current limitations on ownership and voting of ISE Holdings stock, and to introduce new limitations on ownership and voting of U.S. Exchange Holdings stock, which will result in greater consistency with the governing documents of the national securities exchanges currently owned by Nasdaq.<sup>10</sup> In addition, no person who beneficially owns shares of common stock, preferred stock, or notes of Nasdaq in excess of 5% of the securities generally entitled to vote may vote the shares in excess of 5%. These limitations, taken together, would mitigate the potential for undue control to be exercised over the operations of the Exchange, whether by a Nasdaq shareholder or otherwise, and would facilitate the Exchange’s and the Commission’s ability to carry out their regulatory obligations under the Act. The resulting ownership structure of the Exchange, including the proposed limitations on ownership and voting, will maintain the independence of the Exchange’s self-regulatory function, enable the Exchange to operate in a manner that complies with the federal securities laws, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations.

Second, the Exchange believes that it is consistent with the Act for neither the current “ISE Trust” nor the “Charitable Trust” to exist. The governing documents of the national

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<sup>8</sup> 15 U.S.C. 78s(b)(1).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> For example, Article Fourth of the BX Exchange Certificate of Incorporation provides that all of the issued and outstanding shares of BX Exchange common stock shall be held by Nasdaq, and that Nasdaq may not transfer or assign any shares BX Exchange, in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder. See Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01).



securities exchanges currently owned by Nasdaq do not provide for a “trust” mechanism with respect to shares of those exchanges. Moreover, the cumulative limitations on ownership and voting with respect to the various entities (i.e., the Exchange, ISE Holdings, U.S. Exchange Holdings and Nasdaq) would continue to facilitate an ownership structure that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect owners and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange. The proposal will also maintain the independence of the Exchange’s self-regulatory function, enable the Exchange to operate in a manner that complies with the federal securities laws, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations.

Third, the Exchange believes that the proposed amendment to Rule 309 is consistent with the Act, as it would more closely align the restrictions on affiliation with and ownership of the Exchange with the restrictions in place with respect to the national securities currently owned by Nasdaq.<sup>11</sup> This aspect of the proposed change also is consistent with the Act in light of the proposed deletion of current Section III(a)(i)(y) of Article FOURTH of the ISE Holdings COI, which currently provides for a 20% limit on ownership of the Exchange by the Exchange’s Members. In this regard, this aspect of the proposal embeds the limitation within the Exchange’s rules, rather than within the ISE Holdings COI, which would be a technical change, without impacting the existing limitation on Member ownership of the Exchange.

#### Accelerated Approval

The Exchange respectfully requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act,<sup>12</sup> prior to the 30th day after publication of this Partial Amendment 1 in the Federal Register. This proposed

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<sup>11</sup> The proposed amendment to Rule 309 to prohibit any Exchange Member or person associated with a Member from being the beneficial owner, directly or indirectly, of greater than 20% of the then-outstanding voting securities of Nasdaq would be consistent with Rule 2130 of BX Exchange and Rule 985 of Phlx Exchange, which the Commission previously found consistent with the Act. See Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR-Phlx-2008-31); 58324 supra note 10. The proposed amendment to Rule 309 to prohibit any Exchange Member or person associated with a Member from being the beneficial owner, directly or indirectly, of greater than 20% of the then-outstanding voting securities of the Exchange is consistent with Rule 2130 of NASDAQ Exchange, which also prohibits any NASDAQ Exchange member or person associated with such a member from being the beneficial owner of greater than 20% of the then-outstanding voting securities of NASDAQ Exchange, which the Commission previously found consistent with the Act. See NASDAQ Exchange Rule 2130 and Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition, as described in the Original Proposal. The Exchange believes that this proposal should be approved as soon as possible, without undue delay, because the changes proposed in this Partial Amendment 1 will not impair the ability of the Commission or the Exchange to discharge their respective responsibilities under the Act. The Exchange also believes that accelerated approval is appropriate given the resulting ownership structure of the Exchange, including the resulting limitations on ownership and voting, which will contribute to maintaining the independence of the Exchange's self-regulatory function, enable the Exchange to operate in a manner that complies with the federal securities laws, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations. Neither the Transaction nor the changes proposed by the Exchange would impact the Commission's plenary regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect owners with respect to activities related to the Exchange. Accelerated approval would also permit the parties to promptly effect the Transaction. For these reasons, the Exchange believes that there is good cause for the Commission to approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act, prior to the 30th day after publication of this Partial Amendment 1 in the Federal Register.

Exhibit 5E – Third Amended and Restated Certification of Incorporation of ISE Holdings

Text of the Proposed Rule Change

Underlining indicates additions; [Brackets] indicate deletions.

[SECOND] THIRD AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.

International Securities Exchange Holdings, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, as amended from time to time (the “DGCL”), does hereby certify as follows:

**FIRST:** The name of the corporation is International Securities Exchange Holdings, Inc. (the “**Corporation**”).

**SECOND:** The address of the Corporation’s registered office in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent, Delaware 19904. The name of its registered agent at such address is National Registered Agents, Inc.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**FOURTH:** The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is **two hundred one thousand (201,000)** shares, which shall be divided as follows: **one hundred one thousand (101,000)** shares of Common Stock, par value \$.01 per share (the “**Common Stock**”) and **one hundred thousand (100,000)** shares of preferred stock, par value \$.01 per share (hereinafter referred to as the “**Preferred Stock**”). The powers, designations, preferences and relative, participating, optional or other special rights (and the qualifications, limitations or restrictions thereof) of the Common Stock and the Preferred Stock are as follows:

**I. Preferred Stock**

The Board of Directors of the Corporation (hereinafter referred to as the “**Board of Directors**”) is hereby expressly authorized at any time, and from time to time, to create and provide for the issuance of shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the DGCL (hereinafter referred to as a “**Preferred Stock Designation**”), to establish the number of shares to be included in each such series, and to fix the designations, preferences and relative, participating, optional or other special rights of the shares of each such series and the qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by the Board of Directors, including, but not limited to, the following:

(a) the designation of and the number of shares constituting such series, which number the Board of Directors may thereafter (except as otherwise provided in the Preferred

Stock Designation) increase or decrease (but not below the number of shares of such series then outstanding);

(b) the dividend rate for the payment of dividends on such series, if any, the conditions and dates upon which such dividends shall be payable, the preference or relation which such dividends, if any, shall bear to the dividends payable on any other class or classes of or any other series of capital stock, the conditions and dates upon which such dividends, if any, shall be payable, and whether such dividends, if any, shall be cumulative or non-cumulative;

(c) whether the shares of such series shall be subject to redemption by the Corporation, and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption;

(d) the terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series;

(e) whether or not the shares of such series shall be convertible into or exchangeable for shares of any other class or classes of, any other series of any class or classes of capital stock of, or any other security of, the Corporation or any other corporation, and, if provision be made for any such conversion or exchange, the times, prices, rates, adjustments and any other terms and conditions of such conversion or exchange;

(f) the extent, if any, to which the holders of the shares of such series shall be entitled to vote as a class or otherwise with respect to the election of directors or otherwise;

(g) the restrictions, if any, on the issue or reissue of shares of the same series or of any other class or series;

(h) the amounts payable on and the preferences, if any, of the shares of such series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation; and

(i) any other relative rights, preferences and limitations of that series.

## II. Common Stock

The Common Stock shall be subject to the express terms of any series of Preferred Stock set forth in the Preferred Stock Designation relating thereto.

(a) **Voting Rights.** Subject to the limitations set forth in Section III of this Article FOURTH, each holder of Common Stock shall have one vote in respect of each share of Common Stock held by such holder of record on the books of the Corporation on each matter on which the holders of Common Stock shall be entitled to vote.

(b) **Dividend Rights.** The holders of shares of Common Stock shall be entitled to receive, when and if declared by the Board of Directors, out of the assets of the Corporation which are by law available therefor, dividends payable either in cash, in stock or otherwise.

(c) **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, holders of Common Stock shall be entitled to receive any amounts available for distribution after the payment of, or provision for, obligations of the Corporation and any preferential amounts payable to holders of any outstanding shares of Preferred Stock.

### III. Limitations on Ownership and Voting

As used in this Certificate of Incorporation, the term “**Person**” shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof; the term “**Related Persons**” shall mean (1) with respect to any Person, any executive officer (as such term is defined in Rule 3b-7 under the Securities Exchange Act of 1934 (the “**Exchange Act**”)), director, general partner, manager or managing member, as applicable, and all “**affiliates**” and “**associates**” of such Person (as such terms are defined in Rule 12b-2 under the Exchange Act); (2) with respect to any Person constituting a member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of a Controlled National Securities Exchange (as such term is defined below)(“**Member**”), any broker or dealer with which such Member is associated; (3) with respect to any Person that is an executive officer (as such term is defined in Rule 3b-7 under the Exchange Act), director, general partner, manager or managing member of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (4) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of the Corporation; and the term “**beneficially owned**”, including all derivative or similar words, shall have the meaning set forth in Regulation 13D-G under the Exchange Act; the term “**Voting Shares**” shall mean shares of the capital stock (whether Common Stock or Preferred Stock) of the Corporation that have the right by their terms to vote in the election of members of the Board of Directors or on other matters which may require the approval of the holders of voting shares of the Corporation (other than matters affecting the rights, preferences or privileges of a particular class of capital stock).

(a) **Ownership Limits.** For so long as the Corporation shall control, directly or indirectly, one or more national securities exchange (each, a “**Controlled National Securities Exchange**”), including, but not limited to, International Securities Exchange, LLC, a Delaware limited liability company and wholly owned subsidiary of the Corporation (“**ISE, LLC**”) or facility thereof:

(i) [(x) No Person, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares of the capital stock (whether Common Stock or Preferred Stock) of the Corporation that have the right by their terms to vote in the election of members of the Board of Directors or on other matters which may require the approval of the holders of voting shares of the Corporation (other than matters affecting the rights, preferences or privileges of a particular class of capital stock) (the “**Voting Shares**”) constituting more than forty percent (40%) of the then-outstanding Voting Shares and (y) no Person who is a Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, Voting Shares constituting more than twenty percent (20%) of the then-outstanding Voting Shares ((x) and (y) each an “**Ownership Limit**,” and (x)

and (y) together, the “**Ownership Limits**”).] All authorized shares of capital stock of the Corporation (whether Common Stock or Preferred Stock) that are issued and outstanding shall be held by U.S. Exchange Holdings, Inc. (“U.S. Exchange Holdings”), a Delaware corporation (“Ownership Limit” or “Ownership Limits”). U.S. Exchange Holdings may not transfer or assign any shares of capital stock of the Corporation (whether Common Stock or Preferred Stock), in whole or in part, to any Person, unless such transfer or assignment is filed with, or filed with and approved by, the United States Securities and Exchange Commission (the “Commission”), as the case may be, under Section 19 of the Exchange Act and the rules promulgated thereunder.

(A) Notwithstanding the foregoing and subject to clause (B) below, the Ownership Limit described in Section III(a)(i)[(x)] of this Article FOURTH may be waived by the Board of Directors pursuant to an amendment to the bylaws of the Corporation (the “**Bylaws**”) adopted by the Board of Directors, 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 (1) will not impair the ability of any of the Corporation and the Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Exchange Act and the rules promulgated thereunder; (2) is otherwise in the best interests of the Corporation and its stockholders and the Controlled National Securities Exchange or facility thereof; and (3) will not impair the ability of the [United States Securities and Exchange] Commission [(the “**Commission**”)] to enforce the Exchange Act. Such amendment shall not be effective unless approved by the Commission.

(B) Notwithstanding clause (A) above, in any case where a Person proposes to acquire any shares of capital stock of the Corporation [’s Ownership Percentage (as defined below) will exceed the Ownership Limits upon consummation of any proposed sale, assignment or transfer of the Corporation’s capital stock], the Board of Directors shall have determined that such Person and its Related Persons are not subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Exchange Act).

(C) In making the determinations referred to in clauses (A) and (B) above, the Board of Directors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable.

(D) Any Person (and its Related Persons) that proposes to acquire any shares of capital stock of the Corporation [an Ownership Percentage in excess of the Ownership Limit described in Section III(a)(i)(x) of this Article FOURTH] shall have delivered to the Board of Directors a notice in writing, not less than forty-five (45) days (or any shorter period to which the Board of Directors shall expressly consent)

before the proposed acquisition of shares of capital stock (whether common or preferred) [that would result in such Person exceeding the Ownership Limit described in Section III(a)(i)(x) of this Article FOURTH].

[(E) For purposes of this Section III of this Article FOURTH, “**Ownership Percentage**” means, with respect to any Person, an amount (expressed as a percentage) equal to the quotient of (1) the aggregate number of Voting Shares owned directly or indirectly, of record or beneficially, by such Person and its Related Persons, *divided by* (2) the total number of Voting Shares then outstanding.]

[(ii) Any Person, either alone or together with its Related Persons, that at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, whether directly or indirectly, five percent (5%) or more of the then-outstanding Voting Shares shall, immediately upon so owning five percent (5%) or more of the then-outstanding Voting Shares, give the Board of Directors written notice of such ownership of five percent (5%) or more of the then-outstanding Voting Shares, which notice shall state: (1) such Person’s full legal name; (2) such Person’s title or status and the date on which such title or status was acquired; (3) such Person’s approximate ownership interest in the Corporation; and (4) whether such Person has the power, directly or indirectly, to direct the management or policies of the Corporation, whether through ownership of securities, by contract or otherwise. The Board of Directors shall deliver to the ISE Trust (as defined below) a copy of any written notice provided pursuant to this Section III(a)(ii) of this Article FOURTH.]

[(iii) Each Person required to provide written notice pursuant to Section III(a)(ii) of this Article FOURTH shall update such notice promptly after any change therein; *provided*, that no such updated notice shall be required to be provided to the Board of Directors in the event of an increase or decrease of less than one percent (1%) (of the then-outstanding Voting Shares) in such Person’s Ownership Percentage so reported (such increase or decrease to be measured cumulatively from the amount shown on the last such report) unless any increase or decrease of less than one percent (1%) results in such Person owning more than twenty percent (20%) or more than forty percent (40%) of the then-outstanding Voting Shares (at a time when such Person so owned less than such percentages) or such Person so owning less than twenty percent (20%) or less than forty percent (40%) of the then-outstanding Voting Shares (at a time when such Person so owned more than such percentages). The Board of Directors shall deliver to the ISE Trust a copy of any update provided pursuant to this Section III(a)(iii) of this Article FOURTH.]

(b) **Voting Limits.** (i) For so long as the Corporation shall control, directly or indirectly, one or more Controlled National Securities Exchanges, or facility thereof, U.S. Exchange Holdings shall be entitled to vote or cause the voting of all authorized shares of capital stock of the Corporation (whether Common Stock or Preferred Stock) that are issued and outstanding (“Voting Limit” or “Voting Limits”). U.S. Exchange Holdings may not transfer or

assign any voting rights with respect to the shares of capital stock of the Corporation (whether Common Stock or Preferred Stock), in whole or in part, to any Person, unless such transfer or assignment is filed with, or filed with and approved by, the Commission, as the case may be, under Section 19 of the Exchange Act and the rules promulgated thereunder [no Person, either alone or together with its Related Persons, at any time, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, (A) may be entitled to vote or cause the voting of Voting Shares representing more than twenty percent (20%) of the voting power of the then-outstanding Voting Shares, (B) may be entitled to give any consent or proxy with respect to Voting Shares representing more than twenty percent (20%) of the voting power of the then-outstanding Voting Shares, or (C) enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances which would result in the Voting Shares that shall be subject to such agreement, plan or other arrangement not being voted on any matter or matters or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Voting Shares representing more than twenty percent (20%) of the then-outstanding Voting Shares (assuming, for purposes of this Section III(b)(i)(C) of this Article FOURTH, that all Voting Shares that are subject to such agreement, plan or other arrangement are not then-outstanding Voting Shares) ((A), (B), and (C) each a “**Voting Limit**” and (A), (B) and (C) collectively, the “**Voting Limits**”)]; *provided, however*, that a Voting Limit may be waived by the Board of Directors pursuant to an amendment to the Bylaws adopted by the Board of Directors, 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 (1) such amendment will not impair the ability of any of the Corporation and the Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Exchange Act, (2) such amendment is otherwise in the best interests of the Corporation and its stockholders and the Controlled National Securities Exchange, or facility thereof, (3) such amendment will not impair the ability of the Commission to enforce the Exchange Act, (4) such Person and its Related Persons are not subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Exchange Act), and (5) neither such Person nor any of its Related Persons is a Member. In making the determinations referred to in the immediately preceding sentence, the Board of Directors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act. Such amendment shall not be effective until approved by the Commission. Any Person that proposes to acquire [a Voting Control Percentage (as defined below) in excess of a Voting Limit] shares of capital stock of the Corporation shall have delivered to the Board of Directors a notice in writing, not less than forty-five (45) days (or any shorter period to which the Board of Directors shall expressly consent) before the date on which such Person acquires [a Voting Control Percentage in excess of a Voting Limit] shares of capital stock of the Corporation, of its intention to do so. [The Board of Directors shall deliver to the ISE Trust a copy of any written notice provided pursuant to this Section III(b) of this Article FOURTH.]

(ii) Section III(b)(i) of this Article FOURTH shall not apply to any solicitation of any revocable proxy from any stockholder of the Corporation by the Corporation.



[(iii) For purposes of this Section III of this Article FOURTH, “**Voting Control Percentage**” means, with respect to any Person, an amount (expressed as a percentage) equal to the quotient of (A) the aggregate number of Voting Shares (1) the Person is entitled to vote or cause to be voted or (2) with respect to which a consent or proxy may be given, in each case by such Person and its Related Persons, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, *divided by* (B) the total number of Voting Shares then outstanding (assuming that any Voting Shares subject to an agreement, plan or other arrangement described in Section III(b)(i)(C) of this Article FOURTH are not outstanding Voting Shares for purposes of this calculation).]

[(c) **Violations of any Ownership Limit or Voting Limit; Excess Shares.**

Notwithstanding any other provisions contained in this Section III of this Article FOURTH, if at any time any Person’s Ownership Percentage or Voting Control Percentage exceeds an Ownership Limit or a Voting Limit, the Board of Directors shall so notify the ISE Trust and such Ownership Percentage or Voting Control Percentage shall result in the automatic transfer to the ISE Trust of a majority of the Voting Shares then outstanding *pro rata* from the holders thereof (the “**Excess Shares**”).

(i) All Excess Shares transferred to the ISE Trust shall be held for the exclusive benefit of the Trust Beneficiary (as defined below). Notwithstanding any other provision of this Certificate of Incorporation, or any provision of the Bylaws, to the contrary, Excess Shares held by the ISE Trust shall be or continue to be issued and outstanding Voting Shares.

(ii) Excess Shares shall be entitled to dividends or other distributions, which shall be paid to the ISE Trust for the exclusive benefit of the Trust Beneficiary. The Trustees (as defined below) shall promptly distribute such dividends and other distributions received in respect of the Excess Shares to the Trust Beneficiary.

(iii) Subject to the rights of the holders of any series of Preferred Stock, in the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any other distribution of all or substantially all of the assets of the Corporation, the ISE Trust, as the holder of Excess Shares, shall be entitled to receive ratably with each holder of the same class or series of stock, a portion of the assets of the Corporation available for distribution to the stockholders. The Trustees shall promptly distribute any such assets received in respect of the Excess Shares in any liquidation, dissolution or winding up of, or any distribution of the assets of the Corporation to the Trust Beneficiary.

(iv) To the fullest extent permitted by applicable law, the Trust Beneficiary shall not be entitled to vote such Excess Shares on any matter.

(v) Excess Shares shall not be transferable except in a transfer to which the ISE Trust is a party. Upon receipt of written instructions from the Trust Beneficiary, the Trustees shall promptly use their commercially reasonable efforts to sell the Excess Shares to a Person or Persons, designated by the Trustees,

whose ownership of Voting Shares will not violate any Ownership Limit or Voting Limit, in market transactions, by public offering or otherwise, in each case, at a time or times and in a manner so as to maximize the return on the Excess Shares. Upon any such sale, the interest of the Trust Beneficiary in the Voting Shares sold shall so terminate and the Trustees shall promptly distribute the net proceeds of the sale to the Trust Beneficiary as provided herein.

(vi) The Trust Beneficiary shall have the right to reacquire the Excess Shares from the Trust if and when (A) a Person's Ownership Percentage or Voting Control Percentage no longer exceeds any Ownership Limit or Voting Limit, or (B) a Person's Ownership Percentage or Voting Control Percentage in excess of any Ownership Limit or Voting Limit is waived by the Board of Directors and approved by the Commission in accordance with Sections III(a)(i)(A) and III(b)(i) of this Article FOURTH.

For purposes of this Section III of this Article FOURTH, the term "**ISE Trust**" shall mean the Delaware statutory trust established for the benefit of the Trust Beneficiary pursuant to that certain Trust Agreement (the "**Trust Agreement**") to be entered into among the Corporation, the Trustees, and the Trust Beneficiary; the term "**Trustees**" shall mean the trustees initially appointed pursuant to the Trust Agreement, and any successor trustees appointed in accordance with the Trust Agreement; the term "**Trust Beneficiary**" shall mean U.S. Exchange Holdings, Inc.]

(c[d]) **Effect of Purported Voting in Violation of this Section III of this Article FOURTH.** If any stockholder purports to vote or cause the voting of Voting Shares, grant any consent or proxy with respect to the Voting Shares, or enter into any agreement, plan, or other arrangement for the voting of Voting Shares that would violate, or cause the violation of, any Voting Limit under this Section III of this Article FOURTH, then the Corporation shall not honor such vote or proxy to the extent that such provisions would be violated, and any shares subject thereto shall not be entitled to be voted to the extent of such violation.

**FIFTH:** The Board of Directors is hereby authorized to create and issue, whether or not in connection with the issuance and sale of any of its stock or other securities or property, rights entitling the holders thereof to purchase from the Corporation shares of stock or other securities of the Corporation or any other corporation, recognizing that, under certain circumstances, the creation and issuance of such rights could have the effect of discouraging third parties from seeking, or impairing their ability to seek, to acquire a significant portion of the outstanding securities of the Corporation, to engage in any transaction which might result in a change of control of the Corporation or to enter into any agreement, arrangement or understanding with another party to accomplish the foregoing or for the purpose of acquiring, holding, voting or disposing of any securities of the Corporation. The creation and issuance of any such rights shall be subject to the prior approval of the Commission. Subject thereto, the times at which and the terms upon which such rights are to be issued will be determined by the Board of Directors and set forth in the contracts or instruments that evidence such rights. The authority of the Board of Directors with respect to such rights shall include, but not be limited to, determination of the following:

- (a) the initial purchase price per share or other unit of the stock or other securities or property to be purchased upon exercise of such rights;
- (b) provisions relating to the times at which and the circumstances under which such rights may be exercised or sold or otherwise transferred, either together with or separately from, any other stock or other securities of the Corporation;
- (c) provisions which adjust the number or exercise price of such rights or amount or nature of the stock or other securities or property receivable upon exercise of such rights in the event of a combination, split or recapitalization of any stock of the Corporation, a change in ownership of the Corporation's stock or other securities or a reorganization, merger, consolidation, sale of assets or other occurrence relating to the Corporation or any stock of the Corporation, and provisions restricting the ability of the Corporation to enter into any such transaction absent an assumption by the other party or parties thereto of the obligations of the Corporation under such rights;
- (d) provisions which deny the holder of a specified percentage of the outstanding stock or other securities of the Corporation the right to exercise such rights and/or cause the rights held by such holder to become void;
- (e) provisions which permit the Corporation to redeem or exchange such rights, which redemption or exchange may be within the sole discretion of the Board of Directors, if the Board of Directors reserves such right to itself; and
- (f) the appointment of a rights agent with respect to such rights.

**SIXTH:** The Bylaws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors or meeting of the stockholders.

**SEVENTH:** Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

**EIGHTH:** A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. No amendment or repeal of this Article EIGHTH shall adversely affect any right or protection of a director of the Corporation existing hereunder in respect of any act or omission occurring prior to such amendment or repeal.

**NINTH:** Except as may be expressly provided in this Certificate of Incorporation, the Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation or a Preferred Stock Designation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed herein or by law, and all powers, preferences and rights of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation or

a Preferred Stock Designation, as the same may be amended, are granted subject to the right reserved in this Article NINTH; *provided, however*, that no Preferred Stock Designation shall be amended after the issuance of any shares of the series of Preferred Stock created thereby, except in accordance with the terms of such Preferred Stock Designation and the requirements of law.

**TENTH:** In discharging his or her responsibilities as a member of the Board of Directors, each director, to the fullest extent permitted by law, shall take into consideration the effect that the Corporation's actions would have on the ability of each Controlled National Securities Exchange, or facility thereof to carry out its responsibilities under the Exchange Act and on the ability of each Controlled National Securities Exchange, or facility thereof, and the Corporation: to engage in conduct that fosters and does not interfere with each Controlled National Securities Exchange, or facility thereof and the Corporation's ability 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 mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board of Directors or as an officer or employee of the Corporation, each such director, officer or employee shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with each Controlled National Securities Exchange, or facility thereof, and the Commission pursuant to their respective regulatory authority.

**ELEVENTH:** All confidential information pertaining to the self-regulatory function of each Controlled National Securities Exchange, or facility thereof (including but not limited to confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of each Controlled National Securities Exchange, or facility thereof, that shall come into the possession of the Corporation shall, to the fullest extent permitted by law: (x) not be made available to any Person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (y) be retained in confidence by the Corporation and the officers, directors, employees and agents of the Corporation; and (z) not be used for any commercial purposes. Nothing in this Certificate of Incorporation shall be interpreted as to limit or impede the rights of the Commission or each Controlled National Securities Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations promulgated thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission or each Controlled National Securities Exchange.

**TWELFTH:** For so long as the Corporation shall control, directly or indirectly, each Controlled National Securities Exchange, or facility thereof, the books, records, premises, officers, directors and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors and employees of each Controlled National Securities Exchange for purposes of and subject to oversight pursuant to the Exchange Act, but only to the extent that such books, records and premises are related to, or such officers, directors and employees are involved in, the activities of each Controlled National Securities Exchange, or facility thereof.

The books and records related to the activities of each Controlled National Securities Exchange, or facility thereof, shall be subject at all times to inspection and copying by the Commission and each Controlled National Securities Exchange.

**THIRTEENTH:** The Corporation shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with each Controlled National Securities Exchange and the Commission pursuant to their respective regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate with each Controlled National Securities Exchange and the Commission pursuant to their respective regulatory authority with respect to such agents' activities related to each Controlled National Securities Exchange, or facility thereof.

**FOURTEENTH:** For so long as the Corporation shall control, directly or indirectly, a Controlled National Securities Exchange, or facility thereof, before any amendment to or repeal of any provision of this Certificate of Incorporation of the Corporation shall be effective, the same shall be submitted to the board of directors of each Controlled National Securities Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

IN WITNESS WHEREOF, this [Second] Third Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL and has been executed by a duly authorized officer of the Corporation this [16<sup>th</sup> day of December, 2014] ●, 2016.

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Name:  
Title:

Exhibit 5F – Fourth Amended and Restated Certification of Incorporation of U.S. Exchange Holdings

Text of the Proposed Rule Change

Underlining indicates additions; [Brackets] indicate deletions.

**[THIRD] FOURTH AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION**

**OF**

**U.S. EXCHANGE HOLDINGS, INC.**

**[December 16, 2014] •, 2016**

The name of the corporation is U.S. Exchange Holdings, Inc. (the “**Corporation**”). The Corporation was incorporated on April 24, 2003 by filing its Certificate of Incorporation with the Secretary of State of the State of Delaware under the name U.S. Exchange Holdings, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on April 24, 2003 and was amended and restated on December 19, 2007 (as amended and restated, the “**Original Certificate**”). The Second Amended and Restated Certificate of Incorporation of the Corporation (the “**Second Amended and Restated Certificate**”) was filed pursuant to Sections 242 and 245 of the Delaware General Corporation Law, and restated, integrated and amended the Original Certificate.”). [This] The Third Amended and Restated Certificate of Incorporation of the Corporation ([this] the “Third Restated Certificate”) was filed pursuant to Sections 242 and 245 of the Delaware General Corporation Law, and restates, integrates and amends the Original Certificate. This Fourth Amended and Restated Certificate of Incorporation of the Corporation (this “Restated Certificate”) was filed pursuant to Sections 242 and 245 of the Delaware General Corporation Law, and restates, integrates and amends the Original Certificate.

**FIRST:** The name of the Corporation is U.S. Exchange Holdings, Inc.

**SECOND:** The registered office of the Corporation is to be located at 1209 Orange Street, in the City of Wilmington, in the County of New Castle, in the State of Delaware. The name of its registered agent at that address is The Corporation Trust Company.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL.

**FOURTH:** The total number of shares of stock which the Corporation is authorized to issue is 100,000 shares of common stock and the par value of each such share is \$0.01.

**FIFTH:** The board of directors of the Corporation (the “**Board of Directors**”) may make bylaws and from time to time may alter, amend or repeal bylaws.

**SIXTH:** Unless and except to the extent that the bylaws of the Corporation (the “**Bylaws**”) shall so require, the election of directors of the Corporation need not be by written ballot.

**SEVENTH:** The following provision is inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to exercise all corporate powers and do all acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the statutes of the State of Delaware and of this Restated Certificate and the Bylaws in effect at the time of such action; *provided, however*, that no bylaws adopted shall invalidate any prior act of the directors that would have been valid if such bylaw had not been made.

**EIGHTH:** The Corporation shall, in accordance with the Bylaws and to the fullest extent permitted by Section 145 of the DGCL, as each may be amended from time to time, indemnify all Persons whom it may indemnify pursuant thereto. As used in this Restated Certificate, the term “**Person**” shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

**NINTH:** To the fullest extent that the DGCL, as it may be amended from time to time, permits the limitation or elimination of liability of directors, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except when such liability is imposed (i) directly or indirectly as a result of a violation of the federal securities laws, (ii) for any breach of the director’s duty of loyalty to the Corporation or its stockholders, (iii) for any acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law, (iv) pursuant to Section 174 of the DGCL or (v) as a result of any transaction from which the director derived an improper personal benefit. No amendment or repeal of this Article NINTH shall apply or have any affect on the liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

**TENTH:** In discharging his or her responsibilities as a member of the Board of Directors, each director, to the fullest extent permitted by law, shall, to the extent such director is involved in the activities of one or more national securities exchanges controlled, directly or indirectly, by the Corporation (each, a “**Controlled National Securities Exchange**”), including, but not limited to, International Securities Exchange, LLC, a Delaware limited liability company and an indirect wholly owned subsidiary of the Corporation (“**ISE, LLC**”), or facility thereof, take into consideration the effect that the Corporation’s actions would have on the ability of each Controlled National Securities Exchange, or facility thereof, to carry out its responsibilities under



the Securities Exchange Act of 1934 (the “**Exchange Act**”), and on the ability of each Controlled National Securities Exchange, or facility thereof, and the Corporation: to engage in conduct that fosters and does not interfere with each Controlled National Securities Exchange, or facility thereof, and the Corporation’s ability 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 mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board of Directors or as an officer or employee of the Corporation, each such director, officer, or employee shall, to the extent such director, officer, or employee is involved in the activities of a Controlled National Securities Exchange, or facility thereof, comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Controlled National Securities Exchange pursuant to its respective regulatory authority and the United States Securities and Exchange Commission (the “**Commission**”). Nothing in this Article TENTH shall create any duty owed by any director, officer or employee of the Corporation to any Person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to the foregoing matters. No employee, former employee, beneficiary, customer, creditor, community or regulatory authority or member thereof shall have any rights against any director, officer or employee of the Corporation or the Corporation under this Article TENTH.

**ELEVENTH:** The Corporation shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with each Controlled National Securities Exchange pursuant to its regulatory authority and the Commission and shall take reasonable steps necessary to cause its agents to cooperate with each Controlled National Securities Exchange pursuant to its respective regulatory authority and the Commission with respect to such agents’ activities related to each Controlled National Securities Exchange, or facility thereof.

**TWELFTH:** For so long as the Corporation shall directly or indirectly control a Controlled National Securities Exchange, or facility thereof, the Corporation, its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Controlled National Securities Exchange and to the Controlled National Securities Exchange’s obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors of the Controlled National Securities Exchange relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of the Controlled National Securities Exchange to carry out its responsibilities under the Exchange Act.

**THIRTEENTH:** (i) For so long as the Corporation shall directly or indirectly control a Controlled National Securities Exchange, the Corporation shall take reasonable steps necessary to cause International Securities Exchange Holdings, Inc. (“**ISE Holdings**”), a Delaware corporation and a wholly-owned subsidiary of the Corporation, to be in compliance with the Ownership Limits and the Voting Limits, as such terms are defined in Article FOURTH, Section III of the certificate of incorporation of ISE Holdings. [If any Person, either alone or together with its Related Persons, at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, whether directly or indirectly, 10%,

15%, 20%, 25%, 30%, 35%, or 40% or more of the then outstanding shares in the Corporation, the Corporation shall, as soon as practicable, give written notice of such ownership to the board of directors of each Controlled National Securities Exchange and to the International Securities Exchange Trust, a statutory trust formed under the laws of the state of Delaware, as provided in that certain Third Amended and Restated Trust Agreement, dated as of December 22, 2014, among the Corporation, ISE Holdings, Wilmington Trust Company, as Delaware Trustee, Sharon Brown-Hruska, as Trustee, Robert Schwartz, as Trustee and Heinz Zimmermann, as Trustee, (as such trust agreement may be amended, restated or replaced from time to time), which notice shall state (A) such Person's full legal name, (B) such Person's title or status and the date on which such title or status was acquired, (C) such Person's approximate ownership interest in the Corporation, and (D) whether such Person has the power, directly or indirectly, to direct the management or policies of the Corporation, whether through ownership of securities, by contract or otherwise. As used in this Restated Certificate, the term "**Related Persons**" shall mean (1) with respect to any Person, any executive officer (as defined under Rule 3b 7 under the Exchange Act), director, general partner, manager or managing member, as applicable, and all "**affiliates**" and "**associates**" of such Person (as such terms are defined in Rule 12b 2 under the Exchange Act); (2) with respect to any Person constituting a member of the Controlled National Securities Exchange (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) ("**Member**"), any broker or dealer with which such Member is associated; (3) with respect to any Person that is an executive officer (as defined under Rule 3b 7 under the Exchange Act), director, general partner, manager or managing member of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (4) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of the Corporation; and the term "beneficially owned", including all derivative or similar words, shall have the meaning set forth in Regulation 13D-G under the Exchange Act.]

(ii) For so long as the Corporation shall control, directly or indirectly, one or more Controlled National Securities Exchange, or a facility thereof, all authorized shares of stock of the Corporation that are issued and outstanding shall be held by Nasdaq, Inc. ("**Nasdaq**"), a Delaware corporation. Nasdaq may not transfer or assign any shares of stock of the Corporation, in whole or in part, to any Person, unless such transfer or assignment is filed with, or filed with and approved by, the Commission, as the case may be, under Section 19 of the Exchange Act and the rules promulgated thereunder.

(iii) For so long as the Corporation shall control, directly or indirectly, one or more Controlled National Securities Exchange, or a facility thereof, Nasdaq shall be entitled to vote or cause the voting of all authorized shares of stock of the Corporation that are issued and outstanding. Nasdaq may not transfer or assign any voting rights with respect to the stock of the Company, in whole or in part, to any Person, unless such transfer or assignment is filed with, or filed with and approved by, the Commission, as the case may be, under Section 19 of the Exchange Act and the rules promulgated thereunder.

**FOURTEENTH:** All confidential information pertaining to the self-regulatory function of a Controlled National Securities Exchange, or facility thereof (including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the

Controlled National Securities Exchange, or facility thereof that shall come into the possession of the Corporation shall, to the fullest extent permitted by law: (i) not be made available to any Person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Corporation and the officers, directors, employees and agents of the Corporation; and (iii) not be used for any commercial purposes. Nothing in this Restated Certificate [of Incorporation] shall be interpreted as to limit or impede: (A) the rights of the Commission or the Controlled National Securities Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations promulgated thereunder; or (B) the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission or the Controlled National Securities Exchange.

**FIFTEENTH:** For so long as the Corporation shall control, directly or indirectly, a Controlled National Securities Exchange, or facility thereof, the books, records, premises, officers, directors and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors and employees of the Controlled National Securities Exchange for purposes of and subject to oversight pursuant to the Exchange Act, but only to the extent that such books and records are related to, or such officers, directors and employees are involved in, the activities of the Controlled National Securities Exchange, or facility thereof. The Corporation's books and records relating to the activities of a Controlled National Securities Exchange, or facility thereof, shall be subject at all times to inspection and copying by the Commission and the Controlled National Securities Exchange. The Corporation's books and records related to the activities of a Controlled National Securities Exchange, or facility thereof, shall be maintained within the United States.

**SIXTEENTH:** Notwithstanding any other provision of this Restated Certificate [of Incorporation], for so long as the Corporation shall control, directly or indirectly, a Controlled National Securities Exchange, or facility thereof, before any amendment to or repeal of any provision of this Restated Certificate [of Incorporation of the Corporation] shall be effective, the same shall be submitted to the board of directors of each Controlled National Securities Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

IN WITNESS WHEREOF, the Corporation has caused this [Third] Fourth Amended and Restated Certificate of Incorporation to be signed and attested to by its duly authorized officers as of the date set forth above.

**U.S. EXCHANGE HOLDINGS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

## Exhibit 5H – Proposed ISE Gemini Rule Amendments

Text of the Proposed Rule Change

Underlining indicates additions; [Brackets] indicate deletions.

**Rule 309.      Limitation on Affiliation between the Exchange and Members**

Without prior SEC approval, the Exchange, or any facility of the Exchange, or any entity with which the Exchange or any facility of the Exchange is affiliated shall not, directly or indirectly through one or more intermediaries, acquire or maintain an ownership interest in a Member. In addition, a Member shall not be or become an affiliate of the Exchange, or any facility of the Exchange, or any entity with which the Exchange or any facility of the Exchange is affiliated. In addition, no Member or person associated with a Member shall be the beneficial owner, directly or indirectly, of greater than twenty percent (20%) of the (i) then-outstanding voting Limited Liability Company Interest of the Exchange, or (ii) then-outstanding voting securities of Nasdaq, Inc. [Nothing in this rule shall prohibit a Member from acquiring or holding any equity interest in ISE Holdings, Inc. that is permitted by the Certificate of Incorporation of ISE Holdings, Inc. In addition, n]Nothing in this Rule shall prohibit any Member from being or becoming an affiliate of the Exchange, or any facility of the Exchange, or an affiliate of any affiliate of the Exchange or any facility of the Exchange solely by reason of any officer, director or partner of such Member being or becoming an Exchange Director (as defined in the Constitution) pursuant to the Constitution. For purposes of this rule, any calculation of the voting Limited Liability Company Interest of the Exchange or the voting securities of Nasdaq, Inc. outstanding at any particular time shall be made in accordance with the last sentence of SEC Rule 13d-3(d)(1)(i)(D). The term “beneficially owned”, including all derivative or similar words, shall have the meaning set forth in the Amended and Restated Certificate of Incorporation of Nasdaq, Inc.