

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 71066; File No. SR-ISE-2013-66)

December 12, 2013

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Change Procedure for Processing Fingerprints Under Existing Rule 1408

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 4, 2013, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to change its procedure for processing fingerprints under its existing Rule 1408. The text of the proposed rule change is available on the Exchange's Internet website at <http://www.ise.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to change the procedure under its existing Rule 1408 (Fingerprint-Based Background Checks of Exchange Employees and Independent Contractors and Other Service Providers) regarding its current practice of conducting fingerprint-based criminal records checks of (i) directors, officers and employees of the Exchange and (ii) temporary personnel, independent contractors, consultants, vendors and service providers (collectively, “Contractors”) who have or are anticipated to have access to facilities and records. A number of securities markets have filed rules and procedures with the Securities and Exchange Commission (“Commission” or “SEC”) to obtain fingerprints from certain enumerate [sic] parties.³ ISE’s proposal to change its procedure under its Rule 1408 is consistent with these rules. Specifically, the Exchange is proposing to: (1) discontinue the current method of manual fingerprinting via fingerprint cards and (2) utilize a Live-Scan⁴ electronic system for the taking

³ See Securities Exchange Act Release No. 69496 (May 2, 2013), 78 FR 26671 (May 7, 2013), (Notice of filing and immediate effectiveness of a proposed Chicago Board Options Exchange (“CBOE”) rule change relating to fingerprint-based background checks (SR-CBOE-2013-044)); Rule 28 of the New York Stock Exchange (“NYSE”); Rule 0140 of the Nasdaq Stock Market, Inc. (“Nasdaq”); and Securities Exchange Act Release No. 50157 (August 5, 2004), 69 FR 49924 (August 12, 2004) (policy adopted by the Financial Industry Regulatory Authority (“FINRA”), formerly known as National Association of Securities Dealers, Inc. (“NASD”), to conduct fingerprint-based background checks of NASD employees and independent contractors).

⁴ Live-Scan refers to the process of capturing fingerprints directly into a digitized format as opposed to traditional ink and paper methods. Using Live-Scan technology, images are captured and transmitted to a central location and/or interface for identification processing. Certified Live-Scan systems produce consistent high quality fingerprint images, thereby reducing rejection rates and lowering turnaround times. Live-Scan systems are used by law enforcement agencies for processing criminal fingerprint records

of fingerprints. All of the proposed changes are consistent with the requirements of other options exchanges.⁵

Access to the Federal Bureau of Investigation's ("FBI") (the fingerprint processing arm of the Office of the Attorney General of the United States) database of fingerprint-based records is permitted only when authorized by law. Section 17(f)(2) of the Act explicitly directs the Attorney General of the United States (i.e., the FBI) to provide SROs designated by the Commission with access to criminal history record information. The Exchange has conducted its fingerprint-based record checks of (i) directors, officers and employees of the Exchange and (ii) Contractors since Rule 1408 was adopted on December 18, 2003.⁶ Under the current fingerprinting procedure, the Exchange staff manually rolls the fingerprints and submits the fingerprint cards to the FBI.⁷ The Exchange was recently notified that the FBI would no longer accept card stocks of fingerprints due to the high costs associated with processing these submissions, thereby requiring that all fingerprints be submitted in an electronic format for processing.⁸ The FBI requires a minimum of 3,000 submissions per year in order to maintain a direct FBI connection for electronic fingerprint processing. However, the Exchange's annual volume of fingerprint submissions is approximately 200 per year. Because this is a mere fraction of the minimum requirement set forth by the FBI, it is necessary that the ISE engage an FBI-

and in government and commercial markets for applicant employment background checks.

⁵ See Supra note 1. [should this be changed to 3?]

⁶ See Securities Exchange Act Release No. 48840 (November 25, 2003), 68 FR 67711 (December 3, 2003) (SR-ISE-2003-29).

⁷ The Exchange notes that two to three weeks generally elapses between the time when the ISE submits fingerprint cards and when ISE received [sic] fingerprint reports.

⁸ The Exchange was grandfathered into this process during the FBI's transition to utilizing an electronic system to obtain fingerprints, but now must transition into utilizing an electronic fingerprinting system as required by the FBI.

authorized Channel Partner for these services in order to comply with applicable state and federal law.⁹ Accordingly, the Exchange is now proposing to utilize a Live-Scan electronic fingerprinting system, as mentioned above. Any Live-Scan system utilized by the Exchange will have been certified by the FBI for compliance with the FBI's Integrated Automated Fingerprint Identification System ("IAFIS")¹⁰ image quality specifications. The Live-Scan system will electronically capture and transmit fingerprints to the FBI for processing and transmit fingerprint reports back to the ISE.¹¹ The Live-Scan system will be maintained by an FBI-approved Channel Partner¹² and operated by a qualified Channel Partner representative. The Exchange

⁹ N.Y. Gen. Bus. Law § 359-e (McKinney); 15 U.S.C. 78q(f)(2); 17 CFR 240.17f-2(c), respectively.

¹⁰ The IAFIS, which was launched in July 1999, was developed to offer rapid suspect identification to law enforcement agencies and organizations where criminal background histories are a critical factor in consideration for employment. Because fingerprint cards must be physically transported and processed, substantial delays can be experienced in the identification cycle. To improve the speed and accuracy of the fingerprint identification process and eliminate the need for contributing agencies to create and mail paper fingerprint cards to the FBI for processing, the FBI Criminal Justice Information Services Division developed the IAFIS to support the paperless submission of fingerprint records. IAFIS provides Federal, state and local criminal justice agencies the ability to electronically transmit fingerprint information, vastly improving response time.

¹¹ The Exchange estimates that under this proposed change approximately two days will elapse between when ISE submits electronic fingerprints and when the FBI returns fingerprint reports to the ISE.

¹² FBI-approved Channel Partners receive the fingerprint submission and relevant data, collect the associated fee(s), electronically forward the fingerprint submission with the necessary information to the FBI Criminal Justice Information Services Division ("CJIS") for a national Criminal History Summary check, and receive the electronic summary check result for dissemination to the individual. An FBI-approved Channel Partner simply helps expedite the delivery of Criminal History Summary information on behalf of the FBI. The process for making a request through an FBI-approved Channel Partner is consistent with FBI submission procedures.

notes that at least one other exchange employs the same method for processing fingerprints electronically.¹³

The procedural change that ISE is proposing under its existing rule is concerned with the constitution of a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of ISE and ISE believes that it is therefore eligible to be filed pursuant to section 19(b)(3)(A)(i) of the Act¹⁴ and Rule 19b-4(f)(1)¹⁵ thereunder. The Exchange believes that this proposed procedural change under the existing rule is necessary in order to ensure the Exchange's continued compliance with its Rules and applicable state and federal law.¹⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with the Act¹⁷ and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed procedural change under Rule 1408 is consistent with the Section 6(b)(5)¹⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

¹³ See Securities Exchange Act Release Nos. 46467 (September 6, 2002), 67 FR 58088 (September 13, 2002), (Approval of CBOE using electronic system for submitting fingerprints under its fingerprinting plan), as corrected by 46467A (December 19, 2002), 67 FR 79195 (December 27, 2002).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁵ 17 CFR 240.19b-4(f)(1).

¹⁶ See Supra note 9.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

In particular, the Exchange believes that fingerprint-based background checks via a Live-Scan system of directors, officers, employees and contractors is consistent with the foregoing requirements of Section 6(b)(5) in that it will allow ISE to remain compliant with the requirements of its Rule 1408 and applicable state and federal laws.¹⁹ Continuing to run fingerprint-based background checks is imperative for the Exchange as they help ISE identify and exclude persons with felony or misdemeanor conviction records that may pose a threat to the safety of Exchange personnel or the security of facilities and records, thereby enhancing business continuity, workplace safety and the security of the Exchange's operations and helping to protect investors and the public interest. Additionally, the proposed procedural change will allow ISE to employ the same fingerprinting method currently employed by at least one other SRO.²⁰

For the foregoing reasons, the Exchange believes that the proposed procedural change under the existing rule is appropriate in order to ensure continued compliance with applicable state and federal laws.²¹

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

ISE does not believe that the proposed procedural change under the rule will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act. The proposed procedural change under the rule would enhance the security of the Exchange's facilities and records without adding any burden on market participants and allow the Exchange continued compliance with its fingerprinting rules and with Section 17(f)(2) of the Act as amended by the Dodd-Frank Act.²²

¹⁹ See Supra note 9.

²⁰ See Supra note 13.

²¹ See Supra note 9.

²² See Section 929S of the Dodd-Frank Act.

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

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

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

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act²³ and Rule 19b-4(f)(1) thereunder,²⁴ because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>; or

²³ 15 U.S.C. 78s(b)(3)(A)(i).

²⁴ 17 CFR 240.19b-4(f)(1).

- Send an E-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2013-66 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2013-66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between 10 a.m. and 3 p.m.. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-ISE-2013-66 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Kevin M. O'Neill
Deputy Secretary

²⁵ 17 CFR 200.30-3(a)(12).