

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54273; File No. SR-ISE-2006-45)

August 3, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Establishing ISE Stock Exchange as a Facility of International Securities Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2006, the International Securities Exchange, Inc. (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The ISE proposes to establish ISE Stock Exchange (“ISE Stock”) as a facility, as that term is defined in Section 3(a)(2) of the Act,<sup>3</sup> of the ISE. ISE states that ISE Stock would administer a fully automated marketplace for the trading of equity securities by Electronic Access Members, or EAMs, of ISE under the rules of ISE. ISE Stock would be operated by ISE Stock Exchange, LLC (“ISE Stock, LLC”), a Delaware limited liability company. In this filing, the Exchange is submitting to the Commission: the Certificate of Formation (Exhibit 5(a)); the proposed Second Amended and Restated Limited Liability Company Agreement of ISE Stock (“LLC Agreement”) (Exhibit 5(b)); a Description of Services under the Management Agreement Exhibit 5(c)); Rule Changes of International Securities Exchange (Exhibit 5(d)); Constitutional

---

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

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

Changes of International Securities Exchange, LLC (Exhibit 5(e)). The ISE states that the Certificate of Formation and the LLC Agreement are the source of ISE Stock LLC's governance and operating authority and, therefore, function in a similar manner as articles of incorporation and by-laws function for a corporation. Certain sections of these documents are discussed below. The full text of Exhibit 5(a) through (e) is available on the Commission's Web site at [www.sec.gov](http://www.sec.gov), the Web site of the Exchange at [www.iseoptions.com](http://www.iseoptions.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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to establish ISE Stock as a facility, as that term is defined in Section 3(a)(2) of the Act,<sup>4</sup> of the ISE. ISE Stock would administer a fully automated marketplace for the trading of equity securities by EAMs of ISE under the rules of ISE. ISE Stock would be operated by ISE Stock, LLC, a Delaware limited liability company. In this filing, the Exchange is submitting to the Commission the Certificate of Formation and the LLC

---

<sup>3</sup> 15 U.S.C. 78c(a)(2).

Agreement of ISE Stock, LLC. The Certificate of Formation and the LLC Agreement are the source of ISE Stock, LLC's governance and operating authority and, therefore, function in a similar manner as articles of incorporation and by-laws function for a corporation.

The ISE is a founding and controlling member of ISE Stock, LLC. ISE owns all of the Class A Membership Units of ISE Stock, LLC, representing 51% of the voting securities of ISE Stock, LLC. In addition to its ownership stake in ISE Stock, LLC, ISE will enter into a management agreement (the "Management Agreement") with ISE Stock, LLC. Pursuant to the Management Agreement, ISE Stock, LLC would appoint ISE as ISE Stock, LLC's manager ("Manager") to perform certain management, operational, and related services. In particular, as Manager, ISE would have responsibility for all regulatory functions related to the facility (including conducting market surveillance for trading on ISE Stock). Moreover, the Board of Directors of ISE would be required to approve any changes to the Certificate of Formation and the LLC Agreement of ISE Stock, LLC that are required to be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder.<sup>5</sup> ISE Stock, LLC would have responsibility for the business operations of the facility to the extent those activities are not inconsistent with the regulatory and oversight functions of the ISE as Manager. This means that ISE Stock, LLC would not interfere with ISE's self-regulatory responsibilities. ISE is a registered "national securities exchange" under Section 6 of the Act<sup>6</sup> and a self-regulatory organization ("SRO"). ISE represents that it has adequate funds to discharge all regulatory

---

<sup>4</sup> 15 U.S.C. 78c(a)(2).

<sup>5</sup> LLC Agreement, Section 12.1.

<sup>6</sup> 15 U.S.C. 78f.

functions related to the facility that it proposes to undertake to perform under the Management Agreement and the LLC Agreement.<sup>7</sup>

In this filing, the Exchange is submitting to the Commission the Certificate of Formation and the LLC Agreement of ISE Stock, LLC specifically relating to the control and governance of ISE Stock, LLC that would ensure that the ISE has the authority within ISE Stock, LLC to maintain its responsibility for all regulatory functions related to the ISE Stock facility. The LLC Agreement would ensure that the SEC and the ISE would have regulatory authority over investors and members of the advisory board of ISE Stock, LLC (the “Advisory Board”). The Exchange will submit separate filings to establish ISE rules relating to listing, membership and trading on ISE Stock. As the purpose of this filing is to focus on only those provisions which are directly related to the ISE authority for all regulatory functions of its proposed ISE Stock facility, the Exchange’s discussion in this filing will be limited to those relevant provisions of the LLC Agreement.

#### **Description of LLC Membership Interests in ISE Stock, LLC**

As an LLC, ownership of ISE Stock, LLC is represented by limited liability company membership interests in ISE Stock, LLC. The holders of such membership interests are referred to as the members (the “Members”) of ISE Stock, LLC. The membership interests are divided into two classes -- Class A and Class B limited liability company membership units (collectively, the “Units”). The Units represent equity interests in ISE Stock, LLC and entitle the holders

---

<sup>7</sup> Telephone conference between Michou H.M. Nguyen, Special Counsel, Division of Market Regulation (“Division”), Commission, and Tracy Tang, Assistant General Counsel, Exchange, on August 2, 2006. (clarifying that the sentence refers to the LLC Agreement as well) (herein after referred to as “August 2<sup>nd</sup> Telephone Conference”). See also LLC Agreement, Section 9.2(d).

thereof to participate in certain of ISE Stock, LLC's allocations and distributions. Each "Class A Unit" represents a limited liability company membership interest in ISE Stock, LLC and as a class, the holders of the Class A Units hold fifty-one percent (51%) of the aggregate voting rights of all Members. Each holder of a Class A Unit has a vote, in respect of each Class A Unit held by such holder of record on each matter on which holders of Units are entitled to vote, equal to the product of (A) 51 and (B) a fraction, whose numerator is the number of Class A Units then held by such holder and whose denominator is the number of Class A Units then held by all holders of Class A Units.<sup>8</sup> Currently, ISE holds all of the Class A Units, making it a fifty-one percent (51%) owner of ISE Stock, LLC. Each "Class B Unit" represents a limited liability company membership interest in ISE Stock, LLC. Each holder of a Class B Unit shall have a vote, in respect of each Class B Unit held by such holder of record on each matter on which holders of Class B Units shall be entitled to vote as specifically required by the LLC Agreement or by the Delaware Limited Liability Company Act ("DLLCA"),<sup>9</sup> equal to the product of (A) 49 and (B) a fraction, whose numerator is the number of Class B Units then held by such holder and whose denominator is the number of Class B Units then held by all holders of Class B Units.<sup>10</sup> There are 49 Class B Units issued and outstanding, held by 11 Class B Unit holders. The ISE represents that no Class B Unit holder owns more than 5 units.

### **Management of ISE Stock, LLC**

---

<sup>8</sup> LLC Agreement, Section 3.2(a).

<sup>9</sup> August 2<sup>nd</sup> Telephone Conference (clarifying that reference is to the DLLCA and not the Act).

As the Manager, ISE would have the authority to make all decisions regarding the business of ISE Stock, LLC and matters concerning the Units, such as whether or not to authorize distributions.<sup>11</sup> In certain limited circumstances, the Manager would need the approval of two-thirds of the disinterested members of the Advisory Board prior to taking certain actions, as discussed below. The Manager would be responsible for the control and management of the business of ISE Stock, LLC, and must exercise good faith and integrity in handling its affairs.<sup>12</sup>

Under Section 7.1 of the LLC Agreement, other than as set forth in the LLC Agreement or required by the DLLCA<sup>13</sup> or by the Commission, the Members do not participate in the management or control of ISE Stock, LLC's business, they do not transact any business for ISE Stock, LLC, and they do not have the power to act for or bind ISE Stock, LLC. All of those powers are vested solely and exclusively in the Manager. Specifically, under Section 8.1 of the LLC Agreement, subject to the limitations provided in the LLC Agreement and except as specifically provided therein, the Manager shall have exclusive and complete authority and discretion to manage the operations and affairs of ISE Stock, LLC and to make all decisions regarding the business of ISE Stock, LLC and shall have the power to act for or bind ISE Stock, LLC. Any action taken by the Manager shall constitute the act of and serve to bind ISE Stock, LLC. Further, except as otherwise specifically provided in the LLC Agreement, the Manager has all rights and powers of a "manager" under the DLLCA, and shall have all authority, rights and powers in the management of ISE Stock, LLC business to do any and all other acts and

---

<sup>10</sup> LLC Agreement, Section 3.2(b).

<sup>11</sup> LLC Agreement, Section 8.1 and 8.12.

<sup>12</sup> August 2<sup>nd</sup> Telephone Conference (removing language).

<sup>13</sup> August 2<sup>nd</sup> Telephone Conference (clarifying that reference is to the DLLCA and not the Act).

things necessary, proper, convenient or advisable to effectuate the purposes of the LLC Agreement.

Under Section 8.13 of the LLC Agreement, any replacement and appointment of the Manager, and any assignment of the rights and obligations of the Manager under the Management Agreement, shall be subject to the rule filing process pursuant to Section 19 of the Act. ISE believes that this section provides the Commission with the authority to review and subject to public comment any replacement of the Manager of ISE Stock which the Commission may deem to have the potential to affect ISE's self-regulatory responsibilities regarding its proposed ISE Stock facility.

#### **Governance of ISE Stock, LLC**

Section 8.2(d)(i) of the LLC Agreement establishes the Advisory Board of ISE Stock, LLC as a general advisory board and provides that the Advisory Board will have no power or authority to act for ISE Stock, LLC or to otherwise participate in the ISE Stock's management, except for certain limited matters. Other than the matters for which approval of the Advisory Board is specifically required by the LLC Agreement, any actions taken by the Advisory Board are advisory only and neither the Manager nor any of its Related Persons are required or otherwise bound to act in accordance with any decision, action or comments of the Advisory Board. The Advisory Board has no power or authority to act for ISE Stock, LLC or to otherwise participate in ISE Stock, LLC management. All decisions, including responsibility for the management of ISE Stock, LLC, rest with the manager, and in no event will a member of the Advisory Board be considered a "manager" of ISE Stock, LLC.

Section 8.2(d)(ii) provides that the purpose of the Advisory Board is to: (1) review and assess any potential conflicts of interest that may arise between ISE Stock, LLC, on the one

hand, and the Manager, any Member and/or any of their respective Related Persons,<sup>14</sup> on the other hand (including without limitation conflicts with respect to the receipt by the Manager, or its Related Persons, of fees for services rendered to ISE Stock, LLC); and (2) generally to consult with the Manager on the ISE Stock, LLC's progress in achieving its business objectives.

Section 8.2(d)(iii) provides that the Advisory Board consists of seven members. Each Member of ISE Stock, LLC may nominate a candidate for election to serve on the Advisory Board. Three members of the Advisory Board shall be officers, directors, or partners of holders of the Class A Units, and shall be elected annually by a plurality of the holders of the Class A Units voting together as a class (each a "Class A Advisory Board Member"). Each Class A Advisory Board member shall serve for a term of one year. Four members of the Advisory Board shall be officers, directors, or partners of holders of the Class B Units, and, except as provided below, shall be elected annually by a plurality of the holders of the Class B Units voting together as a class (each a "Class B Advisory Board Member"). In any situation where an

---

<sup>14</sup> "Related Person" means (1) with respect to any Person, any executive officer (as defined under Rule 3b-7 under the 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 Act); (ii) with respect to any Person constituting a "Exchange Member" (as such term is defined in the Constitution of ISE, a copy of which will be provided to any member of ISE Stock upon written request therefore), any broker or dealer with which such "Exchange Member" is associated; (3) with respect to any Person that is an executive officer (as defined under Rule 3b-7 under the 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 Units of ISE Stock, LLC; and the term "beneficially owned" and derivative or similar words shall have the meaning set forth in Regulation 13D-G under the Act. LLC Agreement Section 2.1 "Definitions." August 2<sup>nd</sup> Telephone Conference (conforming purpose section to text of LLC Agreement).



Advisory Board Member's job status changes, either upon a significant change in the employment status at the same employer or upon a change of employer, or if the Member employing the Advisory Board member ceases to be a holder of Class B Units, the Advisory Board member must tender his or her resignation to the Manager, which the Manager, in consultation with the Advisory Board, may, but need not, accept. Notwithstanding any of the foregoing, no Member, other than ISE, shall have more than one representative elected to the Advisory Board during any term. The initial Class B Advisory Board Members shall serve staggered terms with (x) two of such Class B Advisory Board Members serving two consecutive one-year terms, and (y) the other two of such Class B Advisory Board Members serving three consecutive one-year terms. Thereafter, each Class B Advisory Board Member shall serve for a term of one year. In no event shall any Class B Advisory Board Member serve more than three consecutive one-year terms. Each Class B Advisory Board Member will serve until the conclusion of its one-year term, and until such Class B Advisory Board Member's successor has been elected, or re-elected as permitted under the LLC Agreement, by a plurality of the holders of the Class B Units voting together as a class, except in the event of such Class B Advisory Board Member's earlier death, resignation, or termination.

Under Section 8.2(e), ISE Stock, LLC also has advisory committees (the "Advisory Committees"), each consisting of up to ten individuals who consult with ISE Stock, LLC and assist with the development of (1) agency broker trading; (2) institutional trading; (3) technology; and (4) bulk quoting. As with the Advisory Board, the Advisory Committees have no power or authority to act for ISE Stock, LLC or to otherwise participate in management.

---

"Person" means any individual, partnership, limited liability company, association, corporation, trust or other entity. LLC Agreement Section 2.1 "Definitions."

The ISE believes that these limitations on the powers of the Advisory Board and Advisory Committees of ISE Stock, LLC will enable ISE to have complete authority over the control the actions of ISE Stock, LLC, especially as they relate to regulatory responsibilities.

Under Section 8.2(d)(vii) of the LLC Agreement, in discharging his or her responsibilities as a member of the Advisory Board, such member shall take into consideration the effect that ISE Stock LLC's actions would have on the ability of ISE Stock, LLC<sup>15</sup> to carry out its responsibilities under the Act and whether or not his or her actions as a member of the Advisory Board would cause ISE Stock, LLC to engage in conduct that fosters and does not interfere with ISE Stock LLC'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. Furthermore, in discharging his or her responsibilities as a member of the Advisory Board, each member shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with ISE and the Commission pursuant to their respective regulatory authority and the provisions of the LLC Agreement.

Under Section 8.2(d)(viii) of the LLC Agreement, the Manager, in its sole discretion, may, after appropriate notice and opportunity for hearing, terminate an Advisory Board member:

(a) in the event such Advisory Board member has violated any provision of the LLC Agreement,

---

<sup>15</sup> August 2<sup>nd</sup> Telephone Conference (clarifying that sentence relates to ISE Stock, LLC and not ISE).

any federal or state securities law, or (b) if the Manager determines that such action is necessary or appropriate in the public interest or for the protection of investors.

ISE believes that these provisions would require all members of ISE Stock's Advisory Board, regardless of their association with ISE, to adhere to regulatory responsibilities in that they must comply with federal securities laws and the rules and regulations promulgated thereunder, and cooperate with the Commission and the ISE pursuant to their regulatory authority. In addition, all members of the Advisory Board would be required to take into consideration and facilitate ISE's responsibility to comply with the requirements under Section 6(b)(5) of the Act.<sup>16</sup> Members of the Advisory Board that do not adhere to these requirements face termination from the ISE Stock Advisory Board and possible sanctions by regulatory authorities.

---

<sup>16</sup> August 2<sup>nd</sup> Telephone Conference (clarifying that ISE as an SRO has the responsibilities under 6(b)(5) of the Act and not ISE Stock, LLC and clarifying ISE's interpretation of Section 8.2(d)(vii) of the LLC Agreement). Section 8.2(d)(vii) of the LLC Agreement states that Advisory Board members shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with ISE and the Commission pursuant to their respective regulatory authority. ISE interprets this to mean that Advisory Board members must take into consideration and facilitate ISE's responsibilities under Section 6(b)(5) of the Act.

### **Voting Limitations of Members**

Under Section 7.11 of the LLC Agreement, no Person (other than ISE), either alone or together with its Related Persons, as of any record date for the determination of members entitled to vote on any matter, shall be entitled to: (i) vote or cause the voting of Units beneficially owned by such Person or its Related Persons, in person or by proxy or through any voting agreement, plan, or arrangement, to the extent that such Units represent in the aggregate more than twenty percent (20%) of voting power of the then-issued and outstanding Units (such threshold being hereinafter referred to as the “Voting Limitation”); or (ii) enter into any voting agreement, plan, or arrangement that would result in Units beneficially owned by such Person or its Related Persons, subject to such voting agreement, plan, or arrangement not being voted on a matter, or any proxy relating thereto being withheld, where the effect of that voting agreement, plan, or arrangement would be to enable any Person, alone or together with its Related Persons, to exceed the Voting Limitation. ISE Stock, LLC shall disregard any such votes purported to be cast in excess of the Voting Limitation.

The limitations imposed by Sections 7.11 may be waived by the Manager, if in its sole discretion, it consented to expressly permit such waiver of the Voting Limitation; and such waiver shall have been filed with, and approved by, the Commission under Section 19(b) of the Act and shall have become effective thereunder. In granting a waiver, the Manager must have determined that: (i) the exercise of such voting rights or the entering of such agreement, plan or other arrangement, as applicable, by such Person, either alone or together with its Related Persons, will not impair the ability of the ISE Stock, LLC and ISE, as the manager, to carry out its functions and responsibilities, including, but not limited to, under the Act, is otherwise in the best interests of the ISE Stock, LLC and its Members; (ii) such voting rights by such Person,

either alone or together with its Related Persons, will not impair the ability of the Commission to enforce the Act; (iii) neither such Person nor its Related Persons are subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Act); and (iv) neither such Person nor its Related Persons is an “Exchange Member” (as such term is defined in the Constitution of ISE).

The ISE believes that these provisions will prevent any Person from exercising undue control over ISE Stock, LLC and will protect the ability of ISE, as well as other investors, to exercise their full ownership rights. By specifically imposing a Voting Limitation on any Person that owns Units which represent in the aggregate more than twenty percent (20%) of the voting power then entitled to be cast, ISE would ensure that it is in all cases, able to maintain proper control over the exercise of its regulatory function in relation to ISE Stock, LLC, and is not subject to influence that may be adverse to its regulatory responsibilities from any Person who may own a substantial number of the outstanding Units. This provision and other related provisions relating to notice and rule filing requirements with respect to any Person who acquires certain Percentage Interest<sup>17</sup> levels in ISE Stock would serve to protect the integrity of ISE’s self-regulatory responsibilities.

---

<sup>17</sup> “Percentage Interest” shall mean (i) as of any time when the number of outstanding Class B Units does not exceed 49, (x) with respect to the Class B Units one percent (1%) (or fraction thereof) as to each Unit (or fraction thereof) held by such holder of Class B Units and (y) as to the holders of Class A Units, in the aggregate, 100% less the aggregate Percentage Interest of holders of Class B Units as of such time; and as to each holder of a Class A Unit, the product of (x) the aggregate Percentage Interest of all holders of Class A Units and (y) a fraction, whose numerator is the number of Class A Units then held by such holder and whose denominator is the number of Class A Units then held by all holders of Class A Units; and (ii) as of any time when the number of outstanding Class B Units exceeds 49, as to each holder of a Class A Unit or Class B Unit, the percentage equivalent of a fraction whose numerator is the number of Units held by such holder and

## **Ownership Limitations of Members and Changes in Ownership**

Under Section 9.2(a) of the LLC Agreement, no Person (other than ISE), either alone or together with its Related Persons, at any time, may own, directly or indirectly, of record or beneficially, an aggregate amount of Units which would result in more than twenty percent (20%) Percentage Interest level in ISE Stock, LLC (the “Concentration Limitation”). Any transfer of Units that result in the acquisition and holding by any Person, alone or together with its Related Persons, of an aggregate Percentage Interest level which crosses the threshold level of twenty percent (20%) is subject to the rule filing process pursuant to Section 19 of the Act. Furthermore, any transfer of Units that results in a reduction of ISE’s Percentage Interest level of Class A Units or Percentage Interest level in ISE Stock, LLC below the twenty percent (20%) threshold is subject to the rule filing process pursuant to Section 19 of the Act.<sup>18</sup>

The limitations imposed by Sections 9.2(a) may be waived by the Manager, if in its sole discretion, it consented to expressly permit such waiver of the Concentration Limitation; and such waiver shall have been filed with, and approved by, the Commission under Section 19(b) of the Act and shall have become effective thereunder. In granting a waiver, the Manager must have determined that: (i) such beneficial ownership of Units by such Person, either alone or together with its Related Persons, will not impair the ability of ISE Stock, LLC and the Manager to carry out its functions and responsibilities, including but not limited to, under the Act, is otherwise in the best interests of ISE Stock, LLC and its Members; (ii) such beneficial ownership

---

whose denominator is the aggregate number of Units outstanding. LLC Agreement Section 2.1 “Definitions.”

<sup>18</sup> Telephone conference between Michou H.M. Nguyen, Special Counsel, Division, Commission, and Tracy Tang, Assistant General Counsel, Exchange, on August 1, 2006. See also LLC Agreement, Section 9.2(d).

of Units by such Person, either alone or together with its Related Persons, will not impair the ability of the Commission to enforce the Act; (iii) neither such Person nor its Related Persons are subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Act); and (iv) neither such Person nor its Related Persons is an “Exchange Member” (as such term is defined in the Constitution of ISE).

ISE believes that these provisions provide the Commission with the authority to review and subject to public comment any substantial transfer of ownership which the Commission may deem to have the potential to affect the ISE’s self-regulatory responsibilities regarding its proposed ISE Stock facility.

Under Section 9.1, no Member may sell, assign, pledge or in any manner dispose of or create or suffer the creation of a security interest in or any encumbrance on all or a portion of its Units in the Company (the commission of any such act being referred to as a “Transfer”, any person who effects a Transfer being referred to as a “Transferor” and any person to whom a Transfer is effected being referred to as a “Transferee”) except in accordance with the terms and conditions set forth in Article 9 of the LLC Agreement. Any Transfer or purported Transfer of a Unit in ISE Stock, LLC not made in accordance with the LLC Agreement shall be null and void and of no force or effect whatsoever.

Section 9.3 provides that a Member may not Transfer all or any portion of its Units in ISE Stock, LLC to any Person without the consent of the Manager, which consent may be given or withheld in the Manager’s sole discretion; provided, that, subject to Section 9.10 of the LLC

Agreement, a Member may transfer all or a portion of its Units in ISE Stock, LLC to one or more of its Permitted Transferees<sup>19</sup> without the consent of the Manager or any other Member.<sup>20</sup>

Under Section 9.11, unless a Transferee of a Member's Units becomes a Substituted Member,<sup>21</sup> such Transferee shall have no right to obtain or require any information or account of ISE Stock, LLC transactions, or to inspect ISE Stock, LLC's books or to vote on ISE Stock, LLC matters. Furthermore, any successor or Transferee under the LLC Agreement shall be subject to and bound by the LLC Agreement as if originally a party to the LLC Agreement.

---

<sup>19</sup> "Permitted Transferee" means, with respect to another Person, (i) any Person directly or indirectly owning, controlling or holding with power to vote 80% or more of the outstanding voting securities of and equity or beneficial interests in such other Person, (ii) any Person 80% or more of whose outstanding voting securities and equity or beneficial interests are directly or indirectly owned, controlled or held with power to vote by such other Person, (iii) any Person 80% or more of whose outstanding voting securities and equity or other beneficial interests are directly or indirectly owned, controlled or held with power to vote by a Person directly or indirectly owning, controlling or holding with power to vote 80% or more of the outstanding voting securities and equity or other beneficial interests of such other Person with whom affiliate status is being tested, (iv) any Family Members or Family Trusts of such Person and (v) any Member. LLC Agreement Section 2.1 "Definitions."

"Family Members" means, with respect to any natural Person, such Person's spouse, children, parents and lineal descendants of such Person's parents. LLC Agreement Section 2.1 "Definitions."

"Family Trusts" means, with respect to any natural Person, a trust benefiting solely such Person or the Family Members of such Person. LLC Agreement Section 2.1 "Definitions."

<sup>20</sup> If a Member transfers all of its Unit, whether or not the transfer is to a Related Person, such transfer must first be approved by the Manager. Telephone conference between Michou H.M. Nguyen, Special Counsel, Division, Commission, and Tracy Tang, Assistant General Counsel, Exchange, on August 1, 2006 (clarifying the additional restriction on transfers applicable when all of a Member's interest is purported to be transferred). See also LLC Agreement, Section 9.3(c).

<sup>21</sup> "Substituted Member" means any Person admitted to the Company as a substituted Member pursuant to the provisions of Article 9. LLC Agreement Section 2.1 "Definitions."



ISE believes that these transfer restrictions, together with the Voting Limitation and Concentration Limitation, are adequately designed to prohibit any Person, either alone or with its Related Persons, from having the power to control a substantial number of outstanding votes entitled to be cast on any matter, and more importantly, that may be adverse to ISE's regulatory oversight responsibilities. Moreover, ISE believes that these provisions serve to protect the integrity of ISE's and the Commission's regulatory oversight responsibilities and allows the Commission to review, and subject to public notice and comment, the acquisition of substantial ownership or voting power by any Member.

### **Regulatory Jurisdiction Over Members**

Under Section 6.1(b), each Member acknowledges that to the extent that they relate to the business of ISE Stock, LLC, the books, records, premises, officers, directors, agents and employees of Members shall be deemed to be the books, records, premises, officers, directors, agents and employees of ISE Stock, LLC for purposes of and subject to oversight pursuant to the Act. Furthermore,<sup>22</sup> the books, records, premises, officers, directors, agents and employees of ISE Stock, LLC shall be deemed to be the books, records, premises, officers, directors, agents and employees of ISE for purposes of and subject to oversight pursuant to the Act. In addition, the books and records of ISE Stock, LLC will be kept within the U.S.<sup>23</sup>

Section 13.1(a) of the LLC Agreement generally provides that a Member may not disclose any confidential information of ISE Stock or of any other Members to any persons, except as expressly provided by the LLC Agreement. However, Section 13.1(a) provides

---

<sup>22</sup> August 2<sup>nd</sup> Telephone Conference (conforming purpose section to text of LLC Agreement).

<sup>23</sup> LLC Agreement, Section 6.1(a).

exceptions for, among other things, disclosure required by the federal securities laws and any other applicable self-regulatory organization, or in response to a request by the Commission pursuant to the Act or by ISE. In addition, confidential information pertaining to the self-regulatory function of ISE (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of ISE Stock, LLC shall: (i) not be made available to any persons (other than as provided in the next sentence) other than to those officers, directors, employees, and agents of ISE Stock, LLC that have a reasonable need to know the contents thereof; (ii) be retained in confidence by ISE Stock, LLC and the officers, directors, employees and agents of ISE Stock, LLC; and (iii) not be used for any commercial purposes.<sup>24</sup> Nothing in the LLC Agreement shall be interpreted as to limit or impede the rights of the Commission or ISE to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any Member or any officers, directors, employees or agents of ISE Stock, LLC or any Member to disclose such confidential information to the Commission or ISE.<sup>25,</sup>

ISE believes that these provisions would help to ensure access to ISE's books and records by the Commission, and would help enable the Commission to carry out its regulatory responsibilities regarding ISE.<sup>26</sup>

---

<sup>24</sup> LLC Agreement, Section 13.1(b).

<sup>25</sup> LLC Agreement, Section 13.1(c). August 2<sup>nd</sup> Telephone Conference (conforming purpose section to text of LLC Agreement).

<sup>26</sup> August 2<sup>nd</sup> Telephone Conference (conforming purpose section to text of LLC Agreement).

Under Section 6.1(c) of the LLC Agreement, ISE Stock, LLC, its Members, and officers, directors, agents, and employees of ISE Stock, LLC and its Members irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission and ISE, for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, the rules or regulations thereunder, directly arising out of, or relating to, ISE Stock, LLC activities or Section 6.1 of the LLC Agreement (except that such jurisdictions shall also include Delaware for any such matter relating to the organizational or internal affairs of ISE Stock, LLC), and hereby waives, and agrees not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.<sup>27</sup>

Under Section 6.1(d) of the LLC Agreement, ISE Stock, LLC, its Members, the officers, directors, agents, and employees of ISE Stock, LLC and its Members agree to comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with ISE and the Commission pursuant to their respective regulatory authority and the provisions of the LLC Agreement; and to engage in conduct that fosters and does not interfere with ISE Stock, LLC'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

---

<sup>27</sup> Telephone conference between Michou H.M. Nguyen, Special Counsel, Division, Commission, and Tracy Tang, Assistant General Counsel, Exchange, on August 1, 2006 (conforming purpose section to text of LLC Agreement).

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.<sup>28</sup>

Section 6.1(e) provides that ISE Stock, LLC and each Member shall take such action as is necessary to ensure that its respective officers, directors, agents, and employees consent in writing to the application to them of the applicable provisions of Section 6.1 with respect to their ISE Stock, LLC-related activities.<sup>29</sup>

The Exchange believes that these provisions will serve as notice to Members that they will be subject to the jurisdiction of the U.S. federal courts, the Commission and the ISE. While Members may represent a diverse group of business interests, the ISE believes that it is imperative that regulatory cooperation is assured from all Members, regardless of each Member's business location, country of domicile or other circumstance which the Commission may deem to have the potential to be adverse to the regulatory responsibilities and interests of the ISE, the Commission, or the U.S. federal courts. Accordingly, these provisions ensure that, should an occasion arise which requires regulatory cooperation or jurisdictional submission from ISE Stock, LLC or a Member, it will be forthcoming and uncontested.

Under Section 7.1(b) of the LLC Agreement, the Manager, may, after appropriate notice and opportunity for hearing, suspend or terminate a Member's voting privilege or membership: (i) in the event such Member has violated a provision of this Agreement, any federal or state securities law, (ii) such Member or its Related Persons are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); or (iii) if the Manager

---

<sup>28</sup> Id.

<sup>29</sup> Id.

determines that such action is necessary or appropriate in the public interest or for the protection of investors.

ISE believes that this provision would require Members, regardless of the nature of their association with ISE, to adhere to regulatory responsibilities in that they must comply with federal securities laws and the rules and regulations thereunder, and cooperate with the Commission and ISE pursuant to their regulatory authority or face severe consequences such as termination of voting rights or ownership. In addition, Members would be required to take into consideration and facilitate ISE's and ISE Stock's ability to comply with the requirements under Section 6(b)(5) of the Act.<sup>30</sup>

#### **Fair Representation of Trading Participants, or EAMs**

The Exchange believes that the ISE Stock corporate structure assures the fair representation of its members, or trading participants, in the selection of its directors and administration of its affairs, and satisfies Commission requirements in that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

The Exchange notes that Members of (or holders of Units in) ISE Stock, LLC are not automatically entitled to trading privileges on ISE Stock, nor is the purchase of Units a prerequisite for exercising trading privileges on ISE Stock. Rather, in order to exercise trading

---

<sup>30</sup> August 2<sup>nd</sup> Telephone Conference (clarifying that ISE as an SRO has the responsibilities under 6(b)(5) of the Act and not ISE Stock, LLC and clarifying ISE's interpretation of Section 6.1(d) of the LLC Agreement). Section 6.1(d) of the LLC Agreement states that Members shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with ISE and the Commission pursuant to their respective regulatory authority. ISE interprets this to mean that Members must take into consideration and facilitate ISE's responsibilities under Section 6(b)(5) of the Act.

privileges on ISE Stock, a broker-dealer must be an approved EAM of ISE. There is only one type of EAM membership for both options trading on ISE and equities trading on ISE Stock. When an applicant is approved under ISE rules as an EAM, the member is issued one share of Class B Common Stock, Series B-3 (a “B-3 Share”). Under the ISE Constitution, holders of B-3 Shares, or EAMs, have the right to elect two members (the “B-3 Directors”) of the Board of Directors of ISE (the “ISE Board”). Nominees for election to the ISE Board to serve as Industry Directors, including B-3 Directors, are currently made by the Exchange’s Nominating Committee, which is not a committee of the ISE Board, and is comprised of representatives of the holders of each series of Class B Common Stock. Stockholders also may nominate Industry Director candidates for election to the ISE Board by petition. Accordingly, since trading participants on ISE Stock must be EAMs, and since EAMs have the right to elect B-3 Directors of the ISE Board, the Exchange believes that ISE Stock trading participants are fairly represented on the ISE Board. Additionally, as a result of ISE’s stated strategy of selling Units to entities that will support trading on ISE Stock, trading participants will have representation via the ISE Stock, LLC Advisory Board.

The Exchange proposes to modify the language in Rule 312 (Limitation on Affiliation between the Exchange and Members) to clarify that this provision covers not only the Exchange, but the ISE Stock Exchange LLC, as a facility of the ISE, as well.

### **Reorganization into a Holding Company Structure**

Finally, the Exchange notes that it intends to reorganize into a holding company structure on September 1, 2006, in the manner described in Securities Exchange Act Release No. 53705

(April 21, 2006) (SR-ISE-2006-04) (the “Reorganization”).<sup>31</sup> Upon the Reorganization, International Securities Exchange, LLC shall become the registered “national securities exchange” under Section 6 of the Act, the SRO and Manager of ISE Stock, LLC. International Securities Exchange Holdings, Inc. (“ISE Holdings”) shall become the holder of the Class A Units of ISE Stock, LLC.

Prior to the Reorganization, the provisions relating to, among other things, ownership and voting limitations (and exceptions therefrom) are applicable to ISE, as the holder of the Class A Units. Upon the Reorganization, those same provisions are applicable to ISE Holdings, as the holder of the Class A Units. The Exchange believes that applying the exceptions to the ownership and voting limitations to ISE Holdings following the Reorganization is (i) reasonable, as International Securities Exchange, LLC, the SRO, will be a wholly-owned subsidiary of ISE Holdings, and (ii) consistent with the provisions of the LLC Agreement that prevent any Person from exercising undue control over ISE Stock, LLC, as the Certificate of Incorporation and by-laws of ISE Holdings include substantially similar ownership and voting limitations (see, for example, Article Fourth, Subdivision III(a) and (b) of the ISE Holdings Certificate of Incorporation).

## 2. Statutory Basis

ISE believes the proposal is consistent with the requirements of the Act and the rules and regulations promulgated thereunder that are applicable to a national securities exchange, and in particular, with Section 6(b) of the Act.<sup>32</sup> ISE believes that the proposal is consistent with

---

<sup>31</sup> See Securities Exchange Act Release No. 53705 (April 21, 2006), 71 FR 25260 (April 28, 2006) (SR-ISE-2006-04).

<sup>32</sup> 15 U.S.C. 78f(b).

Section 6(b)(5) of the Act<sup>33</sup> in that it is 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the ISE believes that the proposal is designed to enable it to promote competition in the trading of equity securities through establishing a new marketplace.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

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

- A. by order approve the proposed rule change or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

---

<sup>33</sup> 15 U.S.C. 78f(b)(5).



#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2006-45 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-ISE-2006-45. 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 Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-ISE-2006-45 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>34</sup>

Nancy M. Morris  
Secretary

---

<sup>34</sup> 17 CFR 200.30-3(a)(12).