

March 4, 2002

Nancy Sanow
Assistant Director
Division of Market Regulation
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-1001

RE: SR-ISE-2002-01, Amendment No. 1

Dear Ms. Sanow:

The International Securities Exchange LLC ("Exchange") proposes to amend the above-referenced rule filing as indicated in the attachment. Among other things, this amendment expands the concentration limits regarding ownership of the Class A Common Stock of International Securities Exchange, Inc. ("New ISE"). Specifically, there will be a general prohibition on the voting rights with respect to stock that a person owns above a 20 percent ceiling. However, the Board will be able to exempt a person from the voting limit if such an exemption generally would be consistent with the Exchange's self-regulatory responsibilities. The Board would not be able to grant an exemption to: Members; their affiliates; or persons subject to a statutory disqualification. In addition, this amendment specifies that any "poison pill" New ISE adopts will be subject to Commission approval.

Please me know if you have any questions regarding this amendment.

Sincerely,

Michael Simon
Senior Vice President and General Counsel

cc: Deborah Lassman Flynn

Attachment

Attachment

Text of proposed changes

Underlining indicates additions from the original filing; [brackets] indicate deletions from the original filing.

Certificate of Incorporation of International Securities Exchange, Inc.:

* * *

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is five million one hundred and six thousand (5,106,000) shares, which shall be divided into three classes as follows: five million (5,000,000) shares of Class A Common Stock, par value \$.01 per share (the "Class A Common Stock"), six thousand (6,000) shares of Class B Common Stock, par value \$.01 per share (the "Class B Common Stock", and together with the Class A Common Stock, 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:

* * *

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) Class A Common Stock.

(i) Voting Rights. Each holder of Class A Common Stock shall have one vote in respect of each share of Class A 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 (excluding those matters specified below as to which such holder shall have no voting rights). The [H]holders of shares of Class A Common Stock shall have the sole right to elect the Non-Industry Directors (as defined below) and the Chief Executive Officer of the Corporation as a director. The holders of Class A Common Stock shall have no voting rights with respect to any increase in the number of authorized shares of the Series B-1 Stock or the Series B-2 Stock (the "Core Rights"), the definition herein of the term "Core Rights" or the election of the Series B-1 Directors, the Series B-2 Directors or the Series B-3 Directors (as those terms are defined in Article Fifth). The voting rights of each holder of Class A Common Stock are subject to the limitations thereon provided in subparagraph (iv) of this paragraph II(a), Article FOURTH.

* * *

(iv) Concentration Limits. (A) In the event that a holder of Class A Common Stock, together with any affiliate as defined in the Corporation's Constitution (an "Affiliate"), owns more than twenty percent (20%) of the Class A Common Stock (shares owned in excess of twenty percent (20%) being referred to as "Excess Shares"), such holder shall have no voting rights nor give any proxy in relation to a vote of the stockholders of the Corporation with respect to the Excess Shares held by such person; provided, however, that whether or not such person otherwise participates in a meeting in person or by proxy, such person's Excess Shares shall be counted for quorum purposes and shall be voted by the inspector of elections or other person presiding over quorum and vote matters in the same proportion as the shares of Class A Common Stock held by stockholders other than such person are voted (including any abstentions from voting). In applying this paragraph:

(1) The Board of Directors may approve an exemption to this paragraph for any person other than: (1) a Member of the Corporation as defined in the Corporation's Constitution (a "Member"); (2) an Affiliate of such Member; or (3) a person that is subject to a statutory disqualification under Section 3(a)(3) of the Securities Exchange Act of 1934, as amended; and

(2) In granting an exemption pursuant to paragraph II(a)(iv)(A)(1) above, the Board of Directors must determine that such exemption: (1) would not reasonably be expected to diminish the quality of, or public confidence in, the Corporation; (2) would not impair the ability of the Corporation to prevent fraudulent and manipulative acts and practices; and (3) would provide just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities and would assist in the removal of impediments to the perfection of the mechanisms for a free and open market and a national market system.

(B) Founders (as defined in the Corporation's Constitution) shall have a temporary exemption, not to extend past May 26, 2010, from the voting limitation on excess shares contained in paragraph II(a)(iv)(A) above, but only with respect to any vote regarding any merger, consolidation or dissolution of the Corporation or any sale of all or substantially all of the assets of the Corporation.

* * *

SIXTH: 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 Securities and Exchange Commission. Subject thereto, [T]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:

* * *

Constitution of International Securities Exchange, Inc.:

* * *

ARTICLE XIV

Concentration Limits

Section [13.10] 14.1 Concentration Limits on Class B Common Stock.

(a) A holder of Class B Common Stock, together with any affiliate [person who directly or indirectly controls, is controlled by, or is under common control with such holder], may not own more than twenty percent (20%) of Series B-1 Stock or Series B-2 Stock. The Exchange may establish limitations that further limit the number of shares of Class B Common Stock that may be owned by an individual or entity. Founders shall have a temporary exemption, not to extend past May 26, 2010, from the limitation on ownership contained in this paragraph; provided, however, that Founders shall have no voting rights nor give any proxy in relation to a vote of the stockholders of the Corporation, other than a vote related to Core Rights, for any shares in excess of twenty percent (20%) of the Series B-1 Stock or twenty percent (20%) of the Series B-2 Stock; and provided, further, that whether or not a Founder otherwise participates in a meeting in person or by proxy, such Founder's Excess Shares shall be counted for quorum purposes and shall be voted by the inspector of elections or other person presiding over quorum and vote matters in the same proportion as the shares of Series B-1 Stock or Series B-2 Stock, as the case may be, held by stockholders other than such Founder are voted (including any abstentions from voting).

(b) A Member, together with any affiliate [person who directly or indirectly controls, is controlled by, or is under common control with such Member], may not be approved to exercise the trading rights associated with more than twenty percent (20%) of the Series B-1 Stock, nor more than twenty (20%) of the Series B-2 Stock. The Exchange may establish further limitations relating to the Exchange's approval of a Member's ability to effect Exchange Transactions.

[(c) A Member, together with any person who directly or indirectly controls, is controlled by, or is under common control with such Member, may not own more than twenty percent (20%) of the Class A Common Stock. In the event that a Member exceeds this concentration limit, the Member will be required to immediately sell that number of shares of Class A common stock required to reduce such Member's

Class A Common Stock ownership to the twenty percent (20%) concentration limitation. A Member shall have no voting rights nor give any proxy in relation to a vote of the stockholders of the Corporation with respect to the shares of Class A common Stock held by such Member in excess of the twenty percent (20%) concentration limit. Founders shall have a temporary exemption, not to extend past May 26, 2010, from the limitation contained in this paragraph.]

Section 14.2 Concentration Limits on Class A Common Stock. (a) In the event that a holder of Class A Common Stock, together with any affiliate as defined in the Corporation's Constitution (an "Affiliate"), owns more than twenty percent (20%) of the Class A Common Stock (shares owned in excess of twenty percent (20%) being referred to as "Excess Shares"), such holder shall have no voting rights nor give any proxy in relation to a vote of the stockholders of the Corporation with respect to the Excess Shares held by such person; provided, however, that whether or not such person otherwise participates in a meeting in person or by proxy, such person's Excess Shares shall be counted for quorum purposes and shall be voted by the inspector of elections or other person presiding over quorum and vote matters in the same proportion as the shares of Class A Common Stock held by stockholders other than such person are voted (including any abstentions from voting). In applying this paragraph:

(i) The Board may approve an exemption to this paragraph for any person other than: (1) a Member; (2) an Affiliate of such Member; or (3) a person that is subject to a statutory disqualification under Section 3(a)(3) of the Securities Exchange Act of 1934, as amended; and

(ii) In granting an exemption pursuant to paragraph (a)(i) above, the Board must determine that such exemption: (1) would not reasonably be expected to diminish the quality of, or public confidence in, the Corporation; (2) would not impair the ability of the Corporation to prevent fraudulent and manipulative acts and practices; and (3) would provide just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities and would assist in the removal of impediments to the perfection of the mechanisms for a free and open market and a national market system.

(b) Founders shall have a temporary exemption, not to extend past May 26, 2010, from the voting limitation on Excess Shares contained in paragraph (a) above, but only with respect to any vote regarding any merger, consolidation or dissolution of the Corporation or any sale of all or substantially all of the assets of the Corporation.

ARTICLE [XIV] XV

Definition of Terms

Section [14.1] 15.1 Definitions. When used in this Constitution, unless the context otherwise requires:

(a) The term “affiliate” of a person or “affiliated with” another person means a person who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person.

* * *

Rules of International Securities Exchange, Inc.

Rule 307. Sale and Transfer of Market Maker Shares

* * *

Supplementary Material to Rule [310] 307

* * *

Rule [312] 308. Leasing Memberships

* * *