

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56211; File No. SR-ISE-2007-34)

August 6, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Relating to an Amendment to the International Securities Exchange, LLC Constitution and Amended and Restated LLC Agreement

I. Introduction

On May 8, 2007, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Exchange’s Constitution (“ISE Constitution” or “Constitution”) and Amended and Restated LLC Agreement (“ISE LLC Agreement”). The proposed rule change was published for comment in the Federal Register on June 4, 2007.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Currently, the ISE Constitution requires that the President of the Exchange and the Chief Executive Officer (“CEO”) of the Exchange be the same person. The Constitution also currently requires that the number of directors on the board of directors (“Board”) of the Exchange be fixed at 15, to be comprised of: (i) two “PMM Directors”⁴;

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55809 (May 23, 2007), 72 FR 30894.

⁴ As set forth in Article III, Section 3.2(b)(i) of the ISE Constitution, a PMM Director is an officer, director, or partner of a Primary Market Maker elected by a plurality of the holders of the PMM Rights (see Article XII, Section 12.1 of the ISE Constitution) voting together as a class.

(ii) two “CMM Directors”⁵; (iii) two “EAM Directors”⁶; (iv) eight “Non-Industry Directors”⁷ – at least two of whom must be “Public Directors”⁸ – and (v) the person holding the office of President and CEO.

The proposed rule change would remove the requirement that the President be the CEO, and amend the ISE Constitution to require that the director position described in subparagraph (v) above be held by the CEO. The proposal also would amend the Constitution to establish the number of directors at no less than 15 and no more than 16.

⁵ As set forth in Article III, Section 3.2(b)(ii) of the ISE Constitution, a CMM Director is an officer, director, or partner of a Competitive Market Maker elected by a plurality of the holders of the CMM Rights (see Article XII, Section 12.2 of the ISE Constitution) voting together as a class.

⁶ As set forth in Article III, Section 3.2(b)(iii) of the ISE Constitution, an EAM Director is an officer, director, or partner of an Electronic Access Member elected by the plurality of the holders of the EAM Rights (see Article XII, Section 12.3 of the ISE Constitution) voting together as a class.

⁷ As set forth in Article III, Section 3.2(b)(iii) of the ISE Constitution, a “Non-Industry Director” is a director elected by the Sole LLC Member (see infra, note 9) who meets the requirements to be a “non-industry representative.” A “non-industry representative” is defined in Article XIII, Section 13.1(w) as any person that would not be considered an “industry representative” (see below) as well as: (i) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of non-member affiliates, (ii) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity.

An “industry representative” is defined in Article XIII, Section 13.1(t) as a person who is an officer, director, or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three years, as well as a person who has a consulting or employment relationship with or has provided professional services to the Exchange and a person who had any such relationship or provided any such services to the Exchange at any time within the prior three years.

⁸ As set forth in Article III, Section 3.2(b)(iv) of the ISE Constitution, a “Public Director” must be a “public representative,” defined in Article XIII, Section 13.1(dd) as a non-industry representative (see supra, note 7) who has no material business relationship with a broker or dealer or the Exchange.

In conjunction with these changes, Sole LLC Member,⁹ in its sole and absolute discretion, would be able to elect one additional director (“Former Employee Director”) who was employed by the Exchange at any time during the three-year period prior to his or her initial election but otherwise meets the definition of a Non-Industry Director under the Exchange’s Constitution.¹⁰ The proposed rule change also would make conforming amendments to the ISE LLC Agreement.

According to the Exchange, the proposed modifications to its governance structure would provide it with the flexibility to structure its board of directors in a way that would enable the ISE to attract and keep talented individuals.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,¹¹ which requires, among other things, that an exchange be so organized and have the capacity to be able to

⁹ As set forth in Article I, Section 1.1 of the ISE Constitution, the ISE is a single member limited liability company with one limited liability company interest currently authorized (the “LLC Interest”). The holder of the LLC interest is International Securities Exchange Holdings, Inc., which may assign the LLC Interest as provided in the LLC Agreement (the “Sole LLC Member”).

¹⁰ The term of a Former Employee Director would expire at the annual meeting of holders of Exchange Rights and the Sole LLC Member held in the second year following the year of his or her election. (Regarding Exchange Rights, see Article I, Section 1.2 of the ISE Constitution and Article VI of the ISE LLC Agreement.) A Former Employee Director would not be permitted to serve on the Board for more than three consecutive terms, but would be eligible for election as a director following a two-year hiatus from service on the Board, provided that he or she meets the relevant requirements. See proposed new Section 3.2(e)(iv) to Article III of the ISE Constitution.

¹¹ 15 U.S.C. 78f(b)(1).

carry out the purposes of the Act; and with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities 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

The Commission notes that the additional member that the Sole LLC Member would be permitted to elect to the Board, aside from having been an Exchange employee within the prior three years, otherwise would be required to meet the qualifications of a Non-Industry Director. Thus, the Former Employee Director could not be a person who is an officer, director, or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three years. Further, the Commission notes that, under the proposed rule change, the ISE Constitution would continue to provide that eight of the members of the Exchange's board of directors – out of a maximum total of 16 members – must be non-industry representatives. The Commission believes that this proposed balance with respect to the composition of the Exchange's Board is consistent with other self-regulatory organization governance structures that were approved by the Commission.¹⁴

¹² 15 U.S.C. 78f(b)(5).

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ See, e.g., Securities Exchange Act Release No. 54494 (September 25, 2006), 71 FR 58023 (October 2, 2006).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-ISE-2007-34) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).