

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73531; File No. SR-ISEGemini-2014-24)

November 5, 2014

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to a Corporate Transaction Involving Its Indirect Parent

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 October 22, 2014, the ISE Gemini, LLC (the “Exchange” or the “ISE Gemini”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. On October 31, 2014, the Exchange filed Amendment No. 1 to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes to make changes to its indirect, non-U.S. upstream ownership structure (the “Transactions”), in connection with which the Series A Preferred Stock of the Exchange’s sole, direct parent, International Securities Exchange Holdings, Inc. (“ISE Holdings”), will be converted to shares of ISE Holdings common stock (the “Conversion”). In order to consummate the Transactions, including the Conversion, the Exchange proposes to: (i)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange proposed non-substantive changes to amend Exhibits 5E (Form of Eurex Global Derivatives AG Corporate Resolutions) and 5F (Form of Agreement and Consent by and between Eurex Global Derivatives AG and Eurex Zürich AG) so that the text the Exchange proposes to delete accurately reflects the existing text of the resolutions previously submitted to, and approved by, the Commission.

amend and restate the Certificate of Designations of Series A Preferred Stock of ISE Holdings (the “COD”); (ii) amend and restate the Amended and Restated Certificate of Incorporation of ISE Holdings (the “COI”); and (iii) amend and restate the Second Amended and Restated Trust Agreement (the “Trust Agreement”) that exists among ISE Holdings, U.S. Exchange Holdings, Inc. (“U.S. Exchange Holdings”), and the Trustees (as defined therein). The Exchange also proposes that certain corporate resolutions and agreements that were previously established or entered into by entities that will cease to be upstream owners of ISE Gemini after the Transactions will no longer be rules of the Exchange. In addition, the Exchange proposes to amend and restate the Amended and Restated Limited Liability Company Agreement of ISE Gemini (“ISE Gemini LLC Agreement”) with respect to distributions. Finally, the Exchange proposes to make a non-substantive, administrative change to the Second Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings (“U.S. Exchange Holdings COI”), the direct U.S. upstream owner of ISE Holdings, to update a reference therein to the Trust Agreement.

The text of the proposed rule change is available at the Commission’s Public Reference Room and on the Exchange’s Internet website at <http://www.ise.com>.

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

1. Purpose

The purpose of the proposal is to make changes to the Exchange’s indirect, non-U.S. upstream ownership structure, in connection with which the Series A Preferred Stock of the Exchange’s sole, direct parent, ISE Holdings, will be converted to shares of ISE Holdings common stock.⁴

Background

On December 17, 2007, ISE Holdings, the sole, direct parent of the Exchange, became a direct, wholly-owned subsidiary of U.S. Exchange Holdings.⁵ U.S. Exchange Holdings is a wholly-owned, direct subsidiary of Eurex Frankfurt AG (“Eurex Frankfurt”). Eurex Frankfurt is a wholly-owned, direct subsidiary of Eurex Zürich AG (“Eurex Zürich”). Eurex Zürich is jointly-owned (50%/50%) by Deutsche Börse AG (“Deutsche Börse”) and Eurex Global Derivatives AG (“EGD”). EGD is a wholly-owned, direct subsidiary of Deutsche Börse.⁶ Contemporaneous with becoming a direct, wholly-owned subsidiary of U.S. Exchange Holdings, ISE Holdings issued 100,000 shares of Series A Preferred Stock (“ISE Holdings

⁴ The Exchange’s affiliate, International Securities Exchange, LLC (“ISE”), has submitted a nearly identical proposed rule change. See SR-ISE-2014-44. The Commission granted the Exchange’s application for registration as a national securities exchange on July 26, 2013. See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (File No. 10-209). The Exchange was originally named “Topaz Exchange, LLC.”

⁵ See Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR-ISE-2007-101).

⁶ See Securities Exchange Act Release No. 66834 (April 19, 2012), 77 FR 24752 (April 25, 2012) (SR-ISE-2012-21). Each of Deutsche Börse, Eurex Frankfurt, Eurex Zürich, and EGD is referred to as a “Non-U.S. Upstream Owner” and collectively as the “Non-U.S. Upstream Owners.”

Preferred”) to Eurex Services GmbH (“ESG”).⁷ ESG is a wholly-owned, direct subsidiary of Eurex Frankfurt.

ISE Holdings Stock

Two classes of ISE Holdings stock are currently issued and outstanding: (i) 1,000 shares of common stock (“ISE Holdings Common”), which are held exclusively by U.S. Exchange Holdings – the sole, direct owner of ISE Holdings; and (ii) 100,000 shares of ISE Holdings Preferred, which are held exclusively by ESG. Both U.S. Exchange Holdings and ESG are wholly-owned, direct subsidiaries of Eurex Frankfurt. The ISE Holdings Preferred is provided for in the COD, which was adopted on December 19, 2007.⁸ Unlike the ISE Holdings Common, ISE Holdings Preferred generally does not have the right by its terms to vote in the election of the ISE Holdings Board of Directors or on other matters (other than matters affecting the rights, preferences, or privileges of ISE Holdings Preferred or as required by law or as set forth in the COD).⁹ These rights generally reside exclusively with the ISE Holdings Common.

The Transactions

The Transactions are designed to: (i) simplify the indirect ownership structure of the Exchange among the various entities described above; and (ii) create a more efficient capital structure with respect to U.S., German and Swiss laws. The Transactions will not have any

⁷ The ISE Holdings Preferred was issued with a par value of \$.01 per share to finance, and thereby facilitate the completion of, the 2007 transaction described in SR-ISE-2007-101, supra note 5.

⁸ See supra note 5.

⁹ See COD, Section 5(a). ISE Holdings Preferred would have certain of such rights, if, for example, ISE Holdings were to (i) file a petition, application, answer or consent seeking reorganization or relief under any applicable bankruptcy law, (ii) formally approve a plan to dissolve or wind up, or (iii) fail to pay all accrued and unpaid ISE Holdings Preferred dividends in any two consecutive calendar years. See COD, Section 5(b).

effect on ISE Holdings' direct ownership of the Exchange or the operations of the Exchange. Consummation of the Transactions is subject to approval of this proposed rule change by the Commission.¹⁰ In order to effectuate the Transactions, including the Conversion, the following steps are anticipated to occur sequentially:

1. On or about December 19, 2014, Eurex Zürich will sell its 100% ownership in Eurex Frankfurt to Deutsche Börse, whereby Eurex Frankfurt will become a wholly-owned, direct subsidiary of Deutsche Börse;¹¹
2. On or about December 21, 2014, Eurex Frankfurt will transfer its 100% ownership in ESG, the sole holder of the ISE Holdings Preferred, to U.S. Exchange Holdings;
3. On or about December 21, 2014, and after completion of Step 2 above, U.S. Exchange Holdings, as the sole, direct owner of ESG, will cause ESG to distribute the ISE Holdings Preferred to U.S. Exchange Holdings;
4. On or about December 22, 2014, Eurex Frankfurt, the sole, direct owner of U.S. Exchange Holdings, will cause U.S. Exchange Holdings to convert the ISE Holdings Preferred into ISE Holdings Common. Each of the 100,000 shares of ISE Holdings Preferred will be converted to one share of ISE Holdings Common. After the Conversion, U.S. Exchange Holdings will continue to hold all of the issued and outstanding shares of ISE Holdings Common (1,000 shares before and 101,000 shares after the Conversion); and

¹⁰ See infra notes 13, 14 and 23.

¹¹ As referenced above, Deutsche Börse is already the 100% indirect owner of Eurex Frankfurt. In addition, Deutsche Börse also is already an approved Non-U.S. Upstream Owner of the Exchange. See supra note 6.

5. On or about December 31, 2014, Eurex Frankfurt will transfer 15% of its ownership in U.S. Exchange Holdings to Deutsche Börse.

As a result of the Transactions, Eurex Zürich and EGD will cease to be Non-U.S. Upstream Owners of the Exchange, as Deutsche Börse will be the sole, direct owner of Eurex Frankfurt, which will directly own 85% of U.S. Exchange Holdings.¹² Deutsche Börse will directly own the remaining 15% of U.S. Exchange Holdings. U.S. Exchange Holdings will remain the sole, direct owner of ISE Holdings. ISE Holdings will also remain the sole, direct owner of the Exchange. The Transactions will not result in any additional person or entity acquiring direct or indirect ownership in the Exchange.

In order to consummate the Transactions in the manner described above, certain administrative amendments will need to be made to the COD, COI and Trust Agreement. The proposed amendments to such documents are as follows:

COD

In order to effect the Conversion, the Exchange proposes to amend certain provisions of the COD, as Section 6(b) of the COD currently provides that the ISE Holdings Preferred is not convertible. Specifically, the Exchange proposes to amend Section 6(b) to provide that each share of ISE Holdings Preferred may, at the option of the holder thereof, be converted into one fully paid and non-assessable share of ISE Holdings Common on the date on which such holder

¹² In connection with each of their ownership interests in the Exchange, Eurex Zürich and EGD, along with Deutsche Börse, Eurex Frankfurt, U.S. Exchange Holdings, ISE Holdings, and ISE, became parties to an agreement to provide for adequate funding for the Exchange's regulatory responsibilities. The Exchange subsequently became a party to the agreement. Following the completion of the Transactions, each of Eurex Zürich and EGD will cease to be a Non-U.S. Upstream Owner of the Exchange, and as such, will no longer be a party to such agreement.

delivers a duly executed notice of conversion to ISE Holdings substantially in the form of a new Annex A attached to the COD.¹³

COI

Article FOURTH of the COI currently provides that the total number of shares of all classes of capital stock that ISE Holdings shall have authority to issue is one hundred one thousand (101,000) shares, which shall be divided as follows: one thousand (1,000) shares of ISE Holdings Common, par value \$.01 per share, and one hundred thousand (100,000) shares of ISE Holdings Preferred, par value \$.01 per share.

In connection with the proposed amendments to the COD, certain provisions of the COI will need to be amended to account for the increase in the authorized number of ISE Holdings Common that will result from the Conversion. Specifically, the Exchange proposes that the number of authorized shares of ISE Holdings Common be increased from 1,000 shares to 101,000 shares (i.e., the existing, issued and outstanding 1,000 shares of ISE Holdings Common plus the additional 100,000 shares of ISE Holdings Common resulting from the Conversion).¹⁴ In addition, the Exchange proposes to maintain the number of authorized ISE

¹³ The proposed amended COD is attached hereto as Exhibit 5A. Section 8 of the COD provides that, with respect to amendments and waivers thereof, except as expressly provided for in the COD, no provision of the COD may be amended, except in a written instrument signed by ISE Holdings and holders of a majority of the ISE Holdings Preferred. Notwithstanding the foregoing, before any amendment to or repeal of any provision of the COD shall be effective, the same shall be submitted to the board of directors of the 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 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 addition to the substantive changes, the Exchange proposes to retitle the COD as the “Amended and Restated” Certificate of Designations of Series A Preferred Stock of ISE Holdings.

¹⁴ The proposed amended COI is attached hereto as Exhibit 5B. Article FOURTEENTH of the COI provides that, for so long as ISE Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of COI

Holdings Preferred at 100,000 shares, in the event that ISE Holdings determines to issue ISE Holdings Preferred in the future. As such, the Exchange therefore proposes to increase the total number of authorized ISE Holdings Common and ISE Holdings Preferred from 101,000 shares to 201,000 shares. For the avoidance of doubt, zero shares of ISE Holdings Preferred would be outstanding post-Conversion.

The COI restricts any person, either alone or together with its related persons, from having voting control, either directly or indirectly, over more than 20% of the outstanding capital stock of ISE Holdings (the “Voting Limit”) and from directly or indirectly owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings) (the “Ownership Limit”).¹⁵ For the avoidance of doubt, the Conversion will not implicate the Voting Limit or Ownership Limit, as U.S. Exchange Holdings will continue to own 100% of the ISE Holdings Common before and after the Conversion. Similarly, no new direct or indirect upstream owners of the Exchange or ISE Holdings will result from the Transactions.¹⁶

shall be effective, the same shall be submitted to the board of directors of the 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 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 addition to the substantive changes, the Exchange proposes to retitle the COI as the “Second” Amended and Restated Certificate of Incorporation of ISE Holdings and update the date thereof.

¹⁵ See COI, Article FOURTH, Section III.

¹⁶ Each of the Non-U.S. Upstream Owners has previously taken appropriate steps to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange. Specifically, each of the Non-U.S. Upstream Owners has adopted resolutions, which were previously approved by the Commission, to incorporate these concepts with respect to itself, as well as its board

Trust Agreement¹⁷

The Trust Agreement serves four general purposes: (i) to accept, hold and dispose of Trust Shares¹⁸ on the terms and subject to the conditions set forth therein; (ii) to determine whether a Material Compliance Event¹⁹ has occurred or is continuing; (iii) to determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option;²⁰ and (iv) to transfer Deposited Shares from the Trust to the Trust Beneficiary²¹ as provided in Section 4.2(h) therein.

The Exchange proposes to amend certain provisions of the Trust Agreement in connection with the Transactions. Specifically, the Exchange proposes to: (i) update the recitals of the Trust Agreement with respect to the Transactions; (ii) remove references to Eurex Zürich and EGD from the definition of “Affected Affiliate” in Section 1.1 of the Trust

members, officers, employees, and agents (as applicable), to the extent that they are involved in the activities of the Exchange. See File No. 10-209, supra note 4. See also discussion below under “Certain Resolutions and Agreements.”

¹⁷ The Trust Agreement exists among ISE Holdings, U.S. Exchange Holdings, and the Trustees (as defined therein).

¹⁸ Under the Trust Agreement, the term “Trust Shares” means either Excess Shares or Deposited Shares, or both, as the case may be. The term “Excess Shares” means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article FOURTH of the COI, through, for example, ownership of one of the Non-U.S. Upstream Owners or U.S. Exchange Holdings, without obtaining the approval of the Commission. The term “Deposited Shares” means shares that are transferred to the Trust pursuant to the Trust’s exercise of the Call Option.

¹⁹ Under the Trust Agreement, the term “Material Compliance Event” means, with respect to a Non-U.S. Upstream Owner, any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the Non-U.S. Upstream Owners to adhere to their respective commitments under the resolutions (i.e., as referenced in note 16) in any material respect.

²⁰ Under the Trust Agreement, the term “Call Option” means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

²¹ Under the Trust Agreement, the term “Trust Beneficiary” means U.S. Exchange Holdings.

Agreement; (iii) remove references to EDGA Exchange, Inc. (“EDGA Exchange”) and EDGX Exchange, Inc. (“EDGX Exchange”) from the definition of “Controlled National Securities Exchange” in Section 1.1 and update the recitals of the Trust Agreement accordingly;²² and (iv) remove EGD’s address from the notice provisions in Section 8.8 of the Trust Agreement.²³

The proposed amendments to the Trust Agreement are strictly administrative changes to reflect the updated corporate structure resulting from the Transactions (and from legacy transactions as related to EDGA Exchange and EDGX Exchange) and will not affect the mechanisms established by the Trust Agreement for the benefit of the Trust Beneficiary.

Certain Resolutions and Agreements

As described above, each of the Non-U.S. Upstream Owners, including EGD and Eurex Zürich, has previously taken appropriate steps to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange.

Specifically, each of such Non-U.S. Upstream Owners has adopted resolutions, which were

²² EDGA Exchange and EDGX Exchange previously were “Controlled National Securities Exchanges.” However, on January 30, 2014 the Commission approved a proposed rule change of EDGA Exchange and EDGX Exchange in connection with the proposed business combination involving their indirect parent company, Direct Edge Holdings LLC, and BATS Global Markets, Inc., the parent company of BATS Exchange, Inc. (“BATS”) and BATS–Y Exchange, Inc. (“BYX”). See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGA-2014-34; SR-EDGX-2014-43). As a result, EDGA Exchange and EDGX Exchange ceased to be “Controlled National Securities Exchanges.”

²³ The Trust Agreement is attached hereto as Exhibit 5C. Section 8.2 of the Trust Agreement provides, in part, that, for so long as ISE Holdings controls, directly or indirectly, the Exchange, before any amendment or repeal of any provision of the Trust Agreement shall be effective, such amendment or repeal shall be submitted to the board of directors of the Exchange, as applicable, and if such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be. In addition to the substantive changes, the Exchange proposes to retitle the Trust Agreement as the “Third” Amended and Restated Trust Agreement and update the date thereof.

previously approved by the Commission, to incorporate these concepts with respect to itself, as well as its board members, officers, employees, and agents (as applicable), to the extent that they are involved in the activities of the Exchange.²⁴ For example, the resolution of each of such Non-U.S. Upstream Owners provides that it shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and with the Exchange. In addition, the resolution of each of such Non-U.S. Upstream Owners provides that the board members, including each person who becomes a board member, would so consent to comply and cooperate and the particular Non-U.S. Upstream Owner would take reasonable steps to cause its officers, employees, and agents to also comply and cooperate, to the extent that he or she is involved in the activities of the Exchange.

In addition to these resolutions, and due to concerns about the ability of EGD to provide the Commission with direct access to information under Swiss law, EGD and Eurex Zürich previously entered into an “Agreement and Consent,” in which EGD agreed to provide information related to the activities of the Exchange, including books and records of EGD related to the activities of the Exchange, to the Commission, through Eurex Zürich. Eurex Zurich in turn, would provide such information to the Swiss Financial Market Supervisory Authority FINMA (“FINMA”), which agreed to serve as a conduit for unfiltered delivery of books and records of EGD related to the activities of the Exchange to the Commission (the “FINMA Procedure”). The FINMA Procedure was designed to ensure that EGD would (1) cooperate with the Commission and the Exchange; (2) comply with U.S. federal securities laws; (3) comply with the inspection and copying of EGD’s books and records; (4) agree that EGD’s books, records, officers, directors and employees be deemed to be those of the Exchange; (5)

²⁴ See supra note 16. See also File No. 10-209, supra note 4.

maintain confidentiality of information pertaining to the self-regulatory function of the Exchange; (6) preserve the independence of the self-regulatory function of the Exchange; (7) take reasonable steps to cause EGD's officers, directors and employees to consent to the applicability to him or her of the resolutions described immediately above; and (8) take reasonable steps to cause EGD's agents to cooperate with the Commission and the Exchange.²⁵

As EGD and Eurex Zürich will cease to be Non-U.S. Upstream Owners of the Exchange after the Transactions, the Exchange proposes administrative changes, such that the resolutions of these entities, as referenced above, along with the Agreement and Consent, will no longer be rules of the Exchange as of a date in December 2014 that corresponds to the effective closing date of the applicable step in the Transactions.²⁶

ISE Gemini LLC Agreement

In addition to the changes described above, the Exchange proposes to amend the ISE Gemini LLC Agreement with respect to distributions. Section 3.1 of the ISE Gemini LLC Agreement currently provides, in part, that the Exchange is authorized to issue a single class of Limited Liability Company Interest, as defined in the Delaware Limited Liability Company Act,²⁷ to ISE Holdings, its sole direct parent, which shall convey all rights to the profits and losses of the Exchange and the right to receive distributions of the assets of the Exchange. The first sentence of Section 3.3 to the ISE Gemini LLC Agreement currently provides that

²⁵ See File No. 10-209, *supra* note 4.

²⁶ The "Form of Swiss Parent Corporate Resolutions" is attached hereto as Exhibit 5D in relation to Eurex Zürich. The "Form of EGD Corporate Resolution" is attached hereto as Exhibit 5E. The "Form of Agreement and Consent between EGD and Eurex Zürich" is attached hereto as Exhibit 5F. As referenced above, resolutions in relation to board members, officers, employees, and agents (as applicable) of EGD and Eurex Zürich also would cease accordingly. In this regard, the "Form of Agreement and Consent (Swiss Entities)" is attached hereto as Exhibit 5G.

²⁷ 6 Del.C. § 18-101, et seq.

distributions may not be made to ISE Holdings except: (i) pursuant to Section 3.4 of the ISE LLC Agreement (e.g., distributions for U.S. Federal and state income tax purposes and/or to fund payments of taxes by ISE Holdings attributable to the assets, income and losses of the Exchange); or (ii) upon liquidation of the Exchange.²⁸ The Exchange proposes to delete this sentence, which could be read as a limitation on the Exchange’s ability to make distributions to ISE Holdings in accordance with Section 3.1. The proposed change would not impact the current practice of distributions from the Exchange to ISE Holdings, and would continue to provide that: (i) ISE Gemini would not be required to make a distribution to ISE Holdings if such distribution would violate the Delaware Limited Liability Company Act, any other applicable law, or is otherwise required to fulfill the regulatory functions or responsibilities of the Exchange, and (ii) Regulatory Funds will not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Exchange and the Exchange will not make any distribution to ISE Holdings using Regulatory Funds.²⁹ Section 3.3 to the ISE Gemini LLC Agreement would continue to ensure that any distributions by the Exchange to ISE Holdings, and subsequently to its indirect upstream owners, including U.S. Exchange Holdings and the Non-U.S. Upstream Owners, would not be made: (i) in

²⁸ This sentence, along with the remainder of Section 3.3, was recently added to the ISE Gemini LLC Agreement. See Securities Exchange Act Release No. 73196 (September 23, 2014), 79 FR 58387 (September 29, 2014) (SR-ISEGemini-2014-23).

²⁹ For purposes of Section 3.3, the term “Regulatory Funds” means fees, fines or penalties derived from the regulatory operations of the Exchange, provided that Regulatory Funds does not include revenues derived from listing fees, market data revenues, transaction revenues or any other aspect of the commercial operations of the Exchange or a facility of the Exchange, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange. The Exchange is proposing to make a non-substantive change to clarify the text regarding use of Regulatory Funds. As a result of the change, the ISE Gemini LLC Agreement and the ISE limited liability company agreement would address distributions in the same manner. ISE is proposing a related change to its respective limited liability company agreement in SR-ISE-2014-44. As a result, the language would be identical for both the Exchange and ISE.

violation of the Exchange’s legal and regulatory responsibilities; or (ii) with Regulatory Funds.³⁰

U.S. Exchange Holdings COI

Lastly, the Exchange proposes to make a non-substantive, administrative change to the U.S. Exchange Holdings COI to update a reference therein to the Trust Agreement. Article THIRTEENTH of the U.S. Exchange Holdings COI contains outdated references to (i) the “Amended and Restated” Trust Agreement, which is currently the “Second Amended and Restated” Trust Agreement and, as discussed herein, will become the “Third Amended and Restated” Trust Agreement; and (ii) the effective date of the Trust Agreement, which previously changed from February 4, 2010 to April 30, 2012³¹ and, as discussed herein, will further change to a date in December 2014 that corresponds to the effective closing date of the applicable step in the Transactions. The Exchange proposes to update these references. The Exchange also proposes to add language specifying that the Trust Agreement may be amended, restated or replaced from time to time, retitle the document as the “Third” Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings, and update the effective date thereof.³² Finally, the Exchange proposes to remove references to EDGA Exchange and

³⁰ The proposed amended ISE Gemini LLC Agreement is attached hereto as Exhibit 5H. In addition to these substantive changes, the Exchange proposes to retitle the ISE Gemini LLC Agreement as the “Second” Amended and Restated Limited Liability Company Agreement, update the date thereof, and update the table of contents.

³¹ See supra note 6.

³² The proposed amended U.S. Exchange Holdings COI is attached hereto as Exhibit 5I. Article SIXTEENTH of the U.S. Exchange Holdings COI provides that, for so long as U.S. Exchange Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of the U.S. Exchange Holdings COI shall be effective, the same shall be submitted to the board of directors of the 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 Act and the rules

EDGX Exchange from the definition of “Controlled National Securities Exchange” in Article TENTH.³³

Summary

Upon the consummation of the Transactions, including the proposed changes to the COD, COI, Trust Agreement, ISE Gemini LLC Agreement and U.S. Exchange Holdings COI (and related resolutions and agreements ceasing to be rules of the Exchange), the Exchange will continue to operate and regulate its market and members in the same exact manner as it did prior to the Transactions. The Transactions will not impair the ability of ISE Holdings, the Exchange, or any facility thereof, to carry out their respective functions and responsibilities under the Act. Moreover, the Transactions will not impair the ability of the Commission to enforce the Act with respect to the Exchange and its Non-U.S. Upstream Owners, including each of their directors, officers, employees and agents, to the extent they are involved in the activities of the Exchange. As such, the Commission’s plenary regulatory authority over the Exchange will not be affected by the approval of this proposed rule change.

2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act,³⁴ in general, and furthers the objectives of Section 6(b)(1) of the Act,³⁵ in particular, in that it 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

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.

³³ See supra note 22.

³⁴ 15 U.S.C. 78s(b).

³⁵ 15 U.S.C. 78s(b)(1).

thereunder, and the rules of the Exchange. The Exchange will operate in the same manner following the Transactions as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The proposed rule change is consistent with and will 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 and its direct and indirect Non-U.S. Upstream Owners, including each of their directors, officers, employees and agents, to the extent they are involved in the activities of the Exchange.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5)³⁶ of the Act because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed 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 mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will continue to provide the Commission and the Exchange with access to necessary information that will allow the Exchange to efficiently and effectively enforce compliance with the Act, as well as allow the Commission to provide proper oversight, which will ultimately promote just and equitable principles of trade and protect investors. In addition, the Exchange believes that the proposed rule change will continue to preserve the independence of the Exchange's self-regulatory function and ensure that the Exchange will be able to obtain any

³⁶ 15 U.S.C. 78f(b)(5).

information it needs in order to detect and deter any fraudulent and manipulative acts in its marketplace and carry out its regulatory responsibilities under the Act.

Approval of this proposed rule change will enable ISE Holdings to continue its operations and the Exchange to continue its orderly discharge of regulatory duties 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Finally, the Exchange is not proposing any significant or novel regulatory issues, nor is it proposing any changes to the Exchange's operational or trading structure in connection with the Transactions. Instead, the Exchange represents that the proposed rule change consists of administrative amendments to ISE Holdings' COI, COD and the Trust Agreement (along with changes to the ISE Gemini LLC Agreement related to distributions; a non-substantive, administrative change to the U.S. Exchange Holdings COI; and administrative changes with respect to certain resolutions and agreements in relation to entities that are or were Non-U.S. Upstream Owners of the Exchange, but whose status as such has already ceased, or that will cease as a result of the Transactions, such that the resolutions and agreements will cease to be rules of the Exchange), and that no changes will be made to other aspects of the Exchange's organizational documents that were previously approved by the Commission.

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

In accordance with Section 6(b)(8) of the Act,³⁷ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change implicates any competitive issues. Rather, the Transactions merely represent a restructuring of indirect ownership interests of the Exchange, and will not involve the introduction of any new direct or indirect owners or any entity or individual that would have the right to direct the actions of the Exchange or vote the shares of the Exchange. As such, the Exchange believes that the proposal is consistent with 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 from members or other interested parties.

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

Within 45 days of the publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such Proposed Rule Change; or
- (B) institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

³⁷ 15 U.S.C. 78f(b)(8).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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. Please include File Number SR-ISEGemini-2014-24 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISEGemini-2014-24. 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 website (<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 the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-ISEGemini-2014-24, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Kevin M. O'Neill
Deputy Secretary

³⁸ 17 CFR 200.30-3(a)(12).