

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76416; File No. SR-ISEGemini-2015-24)

November 10, 2015

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction Involving Its Indirect Parent

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 30, 2015, 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, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to remove Eurex Frankfurt AG (“Eurex Frankfurt”) as an indirect, non-U.S. upstream owner of the Exchange (the “Transaction”). In order to consummate the Transaction, the Exchange proposes to: (i) amend and restate the Third Amended and Restated Trust Agreement (the “Trust Agreement”) that exists among International Securities Exchange Holdings, Inc. (“ISE Holdings”), U.S. Exchange Holdings, Inc. (“U.S. Exchange Holdings”), and the Trustees (as defined therein) in order to remove references to Eurex Frankfurt; and (ii) amend and restate the Third Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings (“U.S. Exchange Holdings COI”) to update a reference therein to the Trust Agreement.

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

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

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 remove Eurex Frankfurt as an indirect, non-U.S. upstream owner of the Exchange.<sup>3</sup>

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. U.S. Exchange Holdings is 85% directly owned by Eurex Frankfurt and 15% directly owned by Deutsche Börse AG (“Deutsche Börse”). Eurex Frankfurt is a wholly-owned, direct subsidiary of Deutsche Börse.<sup>4</sup> Deutsche

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<sup>3</sup> The Exchange’s affiliate, International Securities Exchange, LLC (“ISE”), has submitted a nearly identical proposed rule change. See SR-ISE-2015-36. 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.”

<sup>4</sup> Each of Deutsche Börse and Eurex Frankfurt is referred to as a “Non-U.S. Upstream Owner” and collectively as the “Non-U.S. Upstream Owners.” 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

Börse therefore owns 100% of U.S. Exchange Holdings through its aggregate direct and indirect ownership.

### The Transaction

The Transaction is designed to simplify the indirect ownership structure of the Exchange.<sup>5</sup> The Transaction will not have any effect on ISE Holdings' direct ownership of the Exchange or the operations of the Exchange. Consummation of the Transaction is subject to approval of this proposed rule change by the Commission.<sup>6</sup> In order to effectuate the Transaction, on or about December 31, 2015, Eurex Frankfurt will transfer its 85% ownership in U.S. Exchange Holdings to Deutsche Börse.<sup>7</sup> As a result of the Transaction, Eurex Frankfurt will cease to be a Non-U.S. Upstream Owner of the Exchange, as Deutsche Börse will be the sole, direct owner of U.S. Exchange Holdings.<sup>8</sup> U.S. Exchange Holdings will remain the sole, direct owner of ISE Holdings. ISE Holdings will also remain the sole, direct owner of the

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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 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 3.

<sup>5</sup> In 2014 the Exchange submitted a proposed rule change with the Commission to similarly simplify the indirect ownership structure of the Exchange. See Securities Exchange Act Release No. 73861 (December 17, 2014), 79 FR 77064 (December 23, 2014) (SR-ISEGemini-2014-24).

<sup>6</sup> See infra notes 14 and 15.

<sup>7</sup> 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 4.

<sup>8</sup> In connection with each of their ownership interests in the Exchange, 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. ISE Gemini subsequently became a party to the agreement. Following the completion of the Transaction, Eurex Frankfurt 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.

Exchange. The Transaction will not result in any additional person or entity acquiring direct or indirect ownership in the Exchange.

In order to consummate the Transaction in the manner described above, certain administrative amendments will need to be made to the Trust Agreement and the U.S. Exchange Holdings COI. The proposed amendments to such documents are described below.

#### Trust Agreement<sup>9</sup>

The Trust Agreement serves four general purposes: (i) to accept, hold and dispose of Trust Shares<sup>10</sup> on the terms and subject to the conditions set forth therein; (ii) to determine whether a Material Compliance Event<sup>11</sup> 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;<sup>12</sup> and (iv) to transfer Deposited Shares from the Trust to the Trust Beneficiary<sup>13</sup> as provided in Section 4.2(h) therein.

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<sup>9</sup> The Trust Agreement exists among ISE Holdings, U.S. Exchange Holdings, and the Trustees (as defined therein).

<sup>10</sup> 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 ISE Holdings 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.

<sup>11</sup> 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 4) in any material respect.

<sup>12</sup> 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.

<sup>13</sup> Under the Trust Agreement, the term “Trust Beneficiary” means U.S. Exchange Holdings.

The Exchange proposes to amend certain provisions of the Trust Agreement in connection with the Transaction. Specifically, the Exchange proposes to: (i) update the recitals of the Trust Agreement with respect to the Transaction; and (ii) remove references to Eurex Frankfurt from the definition of “Affected Affiliate” in Section 1.1 of the Trust Agreement.<sup>14</sup> The proposed amendments to the Trust Agreement are strictly administrative changes to reflect the updated corporate structure resulting from the Transaction and will not affect the mechanisms established by the Trust Agreement for the benefit of the Trust Beneficiary.

#### U.S. Exchange Holdings COI

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 references to (i) the “Third Amended and Restated” Trust Agreement, which, as discussed herein, will become the “Fourth Amended and Restated” Trust Agreement; and (ii) the effective date of the Trust Agreement, which, as discussed herein, will change to a date in December 2015 that corresponds to the effective closing date of the Transaction. The Exchange proposes to update these references.

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<sup>14</sup> The proposed, amended Trust Agreement is attached hereto as Exhibit 5A. 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 Securities Exchange Act of 1934 (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. The Exchange also proposes to retitle the Trust Agreement as the “Fourth” Amended and Restated Trust Agreement and update the date thereof.

The Exchange also proposes to retitle the document as the “Fourth” Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings and update the effective date thereof.<sup>15</sup>

#### Certain Resolutions

As described above, each of the Non-U.S. Upstream Owners, including Eurex Frankfurt, 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 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.<sup>16</sup> 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.

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<sup>15</sup> The proposed, amended U.S. Exchange Holdings COI is attached hereto as Exhibit 5B. 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 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.

<sup>16</sup> See supra note 4. See also File No. 10-209, supra note 3.

As Eurex Frankfurt will cease to be a Non-U.S. Upstream Owner of the Exchange after the Transaction, the Exchange proposes that the resolutions of Eurex Frankfurt, as referenced above, will cease to be rules of the Exchange as of a date in December 2015 that corresponds to the effective closing date of the Transaction.<sup>17</sup>

### Summary

Upon the consummation of the Transaction 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 Transaction 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 Transaction will not impair the ability of the Commission to enforce the Act with respect to the Exchange and its Non-U.S. Upstream Owners (which will solely be Deutsche Börse after the Transaction), 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,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(1) of the Act,<sup>19</sup> 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

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<sup>17</sup> As referenced above, resolutions in relation to board members, officers, employees, and agents (as applicable) of Eurex Frankfurt also would cease accordingly. This proposed change would have no impact on the resolutions of Deutsche Börse or its board members, officers, employees, and agents (as applicable).

<sup>18</sup> 15 U.S.C. 78s(b).

<sup>19</sup> 15 U.S.C. 78s(b)(1).

associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange will operate in the same manner following the Transaction 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 Non-U.S. Upstream Owners, including 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)<sup>20</sup> 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

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<sup>20</sup> 15 U.S.C. 78f(b)(5).

Exchange's self-regulatory function and ensure that the Exchange will be able to obtain any 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 Transaction. Instead, the Exchange represents that the proposed rule change consists of administrative amendments to the Trust Agreement and the U.S. Exchange Holdings COI and addresses certain resolutions in relation to Eurex Frankfurt, which currently is a Non-U.S. Upstream Owner of the Exchange, but whose status as such will cease as a result of the Transaction, such that the resolutions will cease to be rules of the Exchange as they relate to Eurex Frankfurt, 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,<sup>21</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in

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<sup>21</sup> 15 U.S.C. 78f(b)(8).

furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change implicates any competitive issues. Rather, the Transaction merely represents 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 date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) 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

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-ISEGemini-2015-24 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISEGemini-2015-24. 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-2015-24, 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.<sup>22</sup>

Robert W. Errett  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).