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All submissions should refer to File Number SR-DTC-2005-22 and should be submitted on or before April 7, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53450; File No. SR-ISE-2006-04]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Its Proposal To Reorganize From Its Current Structure Into a Holding Company Structure

March 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 12, 2006, the International Securities Exchange, Inc. ("ISE, Inc.") 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 ISE, Inc. The Exchange filed Amendment No. 1 to the proposed rule change on March 3, 2006, and withdrew Amendment No. 1 on March 3, 2006. On March 3, 2006, the Exchange filed Amendment No. 2.³ 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

ISE, Inc. is proposing to reorganize from its current structure into a holding company structure as more fully described below. The text of the proposed rule change is available on

ISE, Inc.'s Web site (<http://www.iseoptions.com>), at the principal office of ISE, Inc., and at the Commission's Public Reference Room. The text of Exhibit 5 of the proposed rule change, as well as Amendment No. 2, is also available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>).

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

In its filing with the Commission, ISE, Inc. 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. ISE, Inc. 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

ISE, Inc. proposes to reorganize from the current structure of ISE, Inc., a Delaware corporation, into a holding company structure (the "Reorganization").⁴ A holding company, International Securities Exchange Holdings, Inc., a Delaware corporation ("ISE Holdings"), and its wholly owned subsidiary, International Securities Exchange, LLC, a Delaware limited liability company ("ISE, LLC"), have been formed in contemplation of the Reorganization. Consummation of the Reorganization is conditioned upon

⁴ For a discussion of ISE, Inc.'s current capital stock and governance structure, see Securities Exchange Act Release No. 51029 (January 12, 2005), 70 FR 3233 (January 21, 2005) (SR-ISE-2004-29) (relating to the approval of certain amendments to ISE, Inc.'s Certificate of Incorporation, Constitution, and ISE Rules in connection with ISE, Inc.'s initial public offering) ("IPO Order"). In connection with the initial public offering, ISE, Inc. filed a registration statement on Form S-1 with the Commission (File No. 333-117145).

This proposed rule change includes: (a) The deletion of the Amended and Restated Certificate of Incorporation of ISE, Inc. ("ISE, Inc. Amended Certificate") and Amended and Restated Constitution of ISE, Inc. ("ISE, Inc. Amended Constitution"); (b) the proposed Certificate of Incorporation of International Securities Exchange Holdings, Inc. ("Holdings Certificate"); (c) the proposed Bylaws of International Securities Exchange Holdings, Inc. ("Holdings Bylaws"); (d) the proposed Limited Liability Company Agreement of International Securities Exchange, LLC ("LLC Agreement"); (e) the proposed Constitution of International Securities Exchange, LLC ("LLC Constitution"); and (f) certain proposed amendments to the Rules of ISE, Inc. (the "ISE Rules") to reflect the Reorganization.

satisfaction of certain conditions, including approval of the Reorganization by the Commission.⁵ After satisfaction of these conditions, ISE, Inc. will merge into ISE, LLC, with ISE, LLC as the surviving entity of the merger (the "Merger"). In the Merger:

(1) Each outstanding share of Class A Common Stock will be converted into one share of ISE Holdings common stock, par value \$.01 per share ("ISE Holdings Common Stock");

(2) Each outstanding share of Series B-1 Common Stock will be converted into one PMM Right ("PMM Right"). Each PMM Right provides the holder with (a) the right to vote on the election of the PMM Directors of ISE, LLC,⁶ (b) the right to vote on any change in, amendment or modification of, the Core Rights⁷ or the definition of Core Rights, and (c) the predicate to obtaining the trading rights and privileges associated with each PMM Right as set forth in the LLC Constitution and ISE Rules for a PMM;

(3) Each outstanding share of Series B-2 Common Stock will be converted into one CMM Right ("CMM Right"). Each CMM Right provides the holder with (a) the right to vote on the election of the CMM Directors,⁸ (b) the right to vote on any change in, amendment or modification of, the Core Rights or the definition of Core Rights, and (c) the predicate to obtaining the trading rights and privileges of each CMM Right as set

⁵ ISE, Inc. has received a private letter ruling from the Internal Revenue Service relating to the treatment of the proposed Reorganization under U.S. Federal tax law with respect to ISE, Inc., its stockholders, and ISE Holdings. The ruling provides assurances that the Reorganization and related transactions will not result in any material taxes to the holders of shares of ISE, Inc. Class A Common Stock, par value \$.01 per share ("Class A Common Stock"), ISE, Inc. Class B Common Stock, Series B-1, par value \$.01 per share ("Series B-1 Common Stock"), ISE, Inc. Class B Common Stock, Series B-2, par value \$.01 per share ("Series B-2 Common Stock"), or ISE, Inc. Class B Common Stock, Series B-3, par value \$.01 per share ("Series B-3 Common Stock" and together with the Series B-1 Common Stock and Series B-2 Common Stock, the "Class B Common Stock"). See Internal Revenue Service PLR-135357-04 (November 17, 2004).

⁶ "PMM Directors" as defined in Section 3.2(b) of proposed LLC Constitution means two directors, who must be officers, directors, or partners of Primary Market Makers ("PMMs"), elected by a plurality vote of the holders of the PMM Rights voting together as a class.

⁷ "Core Rights" as defined in Section 2.2 of proposed LLC Agreement means any increase in the number of authorized PMM Rights or CMM Rights.

⁸ "CMM Directors" as defined in Section 3.2(b) of proposed LLC Constitution means two directors, who must be officers, directors, or partners of Competitive Market Makers ("CMMs"), elected by a plurality vote of the holders of the CMM Rights voting together as a class.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Partial Amendment No. 2 dated March 3, 2006 ("Amendment No. 2").

forth in the LLC Constitution and ISE Rules for a CMM; and

(4) Each share of Series B-3 Common Stock will be converted into one EAM Right ("EAM Right" and together with the PMM Rights and CMM Rights, the "Exchange Rights"). Each EAM Right provides the holder thereof with (a) the right to vote on the election of the EAM Directors⁹ and (b) the predicate to obtaining the trading rights and privileges of such EAM Right as set forth in the LLC Constitution and ISE Rules for an EAM.

As a result of the Merger, the holders of shares of Class A Common Stock will become stockholders of ISE Holdings and holders of Series B-1 Common Stock, Series B-2 Common Stock, and Series B-3 Common Stock will become holders of PMM Rights, CMM Rights, and EAM Rights, respectively, in ISE, LLC, as further described below. Effectively, ISE Holdings will become the sole equity owner of ISE, LLC, and the shares of ISE Holdings Common Stock will in turn be publicly held. Furthermore, upon consummation of the Merger, the percentage of the outstanding shares of ISE Holdings Common Stock held after the Merger by each holder of Class A Common Stock will be identical to the percentage of Class A Common Stock that such holder held prior to the Merger. The percentage of Exchange Rights held after the Merger by each holder of Class B Common Stock will also be identical to the percentage of Class B Common Stock that such holder held prior to the Merger, giving effect to the particular series of Class B Common Stock and class of Exchange Rights held and to be held by such holder.

ISE, Inc. represents that, currently, no Person, either alone or together with its Related Persons, owns more than 40 percent of the outstanding shares of any class or series of stock of ISE, Inc., and no member, either alone or together with its Related Persons, owns more than 20 percent of the outstanding shares of any class or series of stock of ISE, Inc.¹⁰ Accordingly, ISE, Inc. has no

⁹ "EAM Directors" as defined in Section 3.2(b) of proposed LLC Constitution means two directors, who must be officers, directors, or partners of Electronic Access Members ("EAMs") elected by a plurality vote of the holders of the EAM Rights voting together as a class. The PMM Directors, CMM Directors, and EAM Directors are collectively referred to as the "Exchange Directors."

¹⁰ "Person" means an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. See ISE, Inc. Amended Certificate, Article Fourth, Subdivision III. Currently, "Related Person" means (1) With respect to any Person, all "affiliates" and "associates" of such Person (as such terms are

reason to believe that the Reorganization, as detailed above, will result in any large concentrations of ownership or voting power by ISE, Inc.'s current stockholders or members. In addition, ISE, Inc. represents that it will continue to have a trading concentration limit and a 20% member ownership limit.¹¹

a. Description of ISE, LLC

i. General

ISE, LLC will be a wholly owned subsidiary of ISE Holdings. As the sole LLC member of ISE, LLC, ISE Holdings will have sole voting control over ISE, LLC, except for certain matters relating to Exchange Rights.¹² Specifically, as

defined in Rule 12b-2 under the Act); (2) with respect to any Person constituting an exchange member (as defined in the ISE, Inc. Amended Constitution), any broker or dealer with which such Exchange Member is associated; and (3) 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 shares of the capital stock of ISE, Inc. See ISE, Inc. Amended Certificate, Article Fourth, Subdivision III. ISE, Inc. proposes to modify the definition of "Related Persons" in connection with the Reorganization to also include, 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, 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. See proposed Holdings Certificate, Article Fourth, Subdivision III.

¹¹ For the member trading concentration limit, see ISE Rule 303(b), which will continue to exist after the Reorganization, and proposed LLC Agreement, Section 6.5. ISE, Inc. proposes to modify Section 6.5(a) of proposed LLC Agreement to include lessees of Exchange Rights and to clarify that holders and lessees of Exchange Rights also may not exercise any of the non-trading rights associated with more than 20% of such Exchange Rights. ISE, Inc. also notes that the Commission is in the process of reviewing issues relating to new ownership structures of self-regulatory organizations ("SROs") and has proposed rules relating to the ownership of SROs, including imposing limitations on member ownership of an SRO or facility of an SRO. See Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004).

ISE, Inc. also notes that the Commission recently approved a separate proposal to amend ISE Rule 303 to increase the 20% member trading concentration limit to 30% for PMMs only, provided that in approving any PMM to exercise the trading privileges associated with more than 20% of the PMMs, the board of directors of ISE, Inc. (the "ISE, Inc. Board") will not approve any arrangement in which the PMM would gain ownership or voting rights in excess of those permitted under the ISE, Inc. Amended Certificate or ISE, Inc. Amended Constitution. See Securities Exchange Act Release No. 53271 (February 10, 2006), 71 FR 8625 (February 17, 2006). See also Amendment No. 2, *supra* note 3.

¹² The proposed LLC Agreement only permits ISE, LLC to have one LLC member at any given time, and assignment of the sole LLC member interest is subject to Commission approval. Proposed LLC Agreement, Sections 2.1, 3.1, and 7.1.

noted below, the composition of and qualifications for the Board of Directors of ISE, LLC (the "LLC Board") will be the same as they are for the ISE, Inc. Board, and ISE Holdings will have the sole right to vote on the election of a majority of the members of the LLC Board. In general, however, the management and administration of ISE, LLC will be carried out by the LLC Board and by the executive officers of ISE, LLC, who will be appointed by the LLC Board.¹³ In addition, to further preserve the autonomy of ISE, LLC, all meetings of the LLC Board pertaining to the self-regulatory function of ISE, LLC (including disciplinary matters) or to the structure of the market in which ISE, LLC regulates will be closed to all persons other than the LLC Board and officers, staff, counsel, or other advisors of ISE, LLC whose participation is necessary or appropriate to the proper discharge of ISE, LLC's regulatory functions and any representative of the Commission. No members of the Board of Directors of ISE Holdings (the "Holdings Board") who are not also LLC Board members and no officers, staff, counsel, or advisors of ISE Holdings who are not also officers, staff, counsel, or advisors of ISE, LLC will be allowed to participate in such meetings.¹⁴

ii. Exchange Operations

ISE, LLC will operate as a registered "national securities exchange" under Section 6 of the Act¹⁵ and will maintain ISE, Inc.'s current regulatory authority over its members.¹⁶ All persons using ISE, LLC as an exchange will continue to be subject to the current ISE Rules, as proposed to be modified herein in order to reflect the Reorganization.¹⁷ ISE, LLC will continue to carry out the statutory responsibilities to enforce compliance of its members with the provisions of the Federal securities laws and ISE Rules.¹⁸

ISE Holdings will not have any voting rights with respect to the Core Rights, the election of Exchange Directors, or any other matters relating to the Exchange Rights, such as the eligibility and approval of persons to own, transfer or lease Exchange Rights, rulemaking, supervision of entities holding Exchange Rights, and the like. Proposed LLC Agreement, Section 2.2.

¹³ Proposed LLC Constitution, Section 5.1(a). See also proposed LLC Agreement, Section 5.1.

¹⁴ Proposed LLC Constitution, Section 3.2(d).

¹⁵ 15 U.S.C. 78f.

¹⁶ For purposes of the Act, the holders or lessees of Exchange Rights will be deemed "members" of ISE, LLC.

¹⁷ ISE, Inc. is proposing to amend the ISE Rules to, among other things, change references to "Class B common stock," "Class B stockholders," "shares," and similar or derivative words to "Exchange Rights," "Exchange Rights holders," and "Rights" and the like.

¹⁸ In addition, in discharging his or her responsibilities as a member of the LLC Board, each director shall take into consideration the effect that

ISE, LLC will continue to be required to approve any changes to ISE Rules and governing documents of ISE, LLC and to file any such changes with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder.¹⁹

In addition, ISE, LLC is proposing to adopt a new ISE Rule 312, which will provide that, without prior Commission approval, ISE, LLC or any entity with which it is affiliated shall not, directly or indirectly through one or more intermediaries, acquire or maintain an ownership interest in a Member or non-member owner, and a Member or non-member owner shall not be or become an affiliate of ISE, LLC or an affiliate of any affiliate of ISE, LLC. Nothing in the new ISE Rule 312 will prohibit a Member or non-member owner from acquiring or holding any equity interest in ISE Holdings, Inc. that is permitted by the Holdings Certificate or prohibit any Member from being or becoming an affiliate of ISE, LLC or an affiliate of any affiliate of ISE, LLC solely by reason of any officer, director, or partner of such Member being or becoming an Exchange Director pursuant to the LLC Constitution.²⁰

All confidential information pertaining to the self-regulatory function of ISE, LLC (including but not limited to disciplinary matters, trading data, trading practices, and audit information) contained in books and records of ISE, LLC shall: (1) Not be made available to any persons (other than as provided below) other than to those officers, directors, employees, and agents of ISE, LLC that have a reasonable need to know the contents thereof; (2) be retained in confidence by ISE, LLC and the officers, directors, employees, and agents of ISE, LLC; and (3) not be used for any commercial purposes. Nothing in the LLC Agreement shall be interpreted to limit or impede the rights

his or her actions would have on the ability of ISE, LLC to carry out its responsibilities under the Act and on the ability of ISE, LLC to engage in conduct that fosters and does not interfere with ISE, 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. In discharging his or her responsibilities as a member of the LLC Board, each director also shall comply with the Federal securities laws and rules and regulations thereunder and cooperate with the Commission. Proposed LLC Agreement, Section 5.1(b).

¹⁹ 15 U.S.C. 78s(b) and 17 CFR 240.19b-4.

²⁰ The term "Member," as proposed to be defined in ISE Rule 100, means an organization that has been approved to exercise trading rights associated with Exchange Rights.

of the Commission to access and examine such confidential information pursuant to the Federal securities laws and rules and regulations thereunder or to limit or impede the ability of any officers, directors, employees, or agents of ISE, LLC to disclose such confidential information to the Commission.²¹

As the registered SRO, ISE, LLC will continue to have ultimate responsibility for the administration and enforcement of the rules governing its options business operations. The regulatory relationship that ISE, Inc. currently maintains with the National Association of Securities Dealers ("NASD") will not be affected by the Reorganization, and ISE, LLC, as the successor-in-interest to ISE, Inc., will continue to have the same regulatory relationship with the NASD.²² The Reorganization will not affect the current disciplinary process. ISE, LLC's disciplinary process will be the same as the process for ISE, Inc. and will continue to be governed by the Business Conduct Committee, which is comprised of members.²³ All decisions with respect to the listing and delisting of options and related products will continue to be made in accordance with ISE Rules.

ISE, Inc. currently is a participant in various national market system plans, including the Options Price Reporting Authority, which provides options price reporting, and the Options Intermarket Linkage Plan, which addresses intermarket options trading. After the Reorganization, ISE, LLC proposes to continue to participate in these plans and have a representative serve on the committees overseeing these plans.

iii. Organization, Management and Governance of ISE, LLC

Since ISE, LLC will be the surviving entity in the Merger, the LLC Agreement and the LLC Constitution will function as the charter and bylaws of the surviving entity. ISE, Inc. represents that the provisions of the LLC Agreement and LLC Constitution are substantively the same as the current ISE, Inc. Amended Certificate and ISE, Inc. Amended Constitution, respectively, insofar as exchange

²¹ Proposed LLC Agreement, Section 4.1(b).

²² See Securities Exchange Act Release No. 4781 (May 14, 2003), 68 FR 27869 (May 21, 2003) (approving an agreement pursuant to Rule 17d-2 of the Act between the NASD and ISE, Inc.).

²³ Currently, the Chief Regulatory Officer of ISE, Inc. authorizes the institution of disciplinary actions, and ISE, Inc., with the assistance of the NASD staff, if appropriate, conducts disciplinary proceedings before the Business Conduct Committee. Decisions of the Business Conduct Committee may be appealed to the Committee for Review of ISE, Inc., which is composed of directors of ISE, Inc.

operations and structure and corporate governance are concerned.²⁴ ISE, LLC will continue to have a similar interpretation regarding the payment of "dividends" to "stockholders," except that the interpretation will relate to distributions to the sole LLC member and holders of Exchange Rights. Specifically, ISE, LLC will interpret ISE Rules to require that any revenue it receives from regulatory fees or penalties will be segregated and applied to fund the legal, regulatory, and surveillance operations of ISE, LLC and will not be used to pay distributions to the sole LLC member or holders of Exchange Rights, except in the event of liquidation of ISE, LLC, in which case the sole LLC member will be entitled to the distribution of ISE, LLC's remaining assets.²⁵

As is the case currently with respect to the ISE, Inc. Board, the LLC Board will be comprised of 15 members,²⁶ eight of whom will be Non-Industry Directors²⁷ elected by ISE Holdings as the sole LLC member, six of whom will be Exchange Directors elected by a plurality of the holders of the Exchange Rights, and the Chief Executive Officer

²⁴ See IPO Order, *supra* note 4. In addition, while the ISE, Inc. Amended Constitution currently only requires that no officers may be holders of shares of Class B Common Stock or affiliated with an exchange member, ISE, LLC will require that no officers or employees of ISE, LLC may be holders of Exchange Rights or affiliated with an Exchange Member. Proposed LLC Constitution, Section 4.5. ISE, Inc. also is codifying its current practice of prohibiting the transfer or lease of fractional portions of any Exchange Rights. Proposed LLC Constitution, Sections 12.1, 12.2, and 12.4.

²⁵ See Securities Exchange Act Release No. 45803 (April 23, 2002), 67 FR 21306 (April 30, 2002) (adopting this interpretation in connection with ISE, Inc.'s demutualization).

²⁶ ISE, Inc. proposes that the number of members of the LLC Board may only be changed by the LLC Board with the approval of the affirmative vote of the holders of two-thirds of the then outstanding Exchange Rights. Proposed LLC Constitution, Section 3.2. Currently, the number of ISE, Inc. Board members can only be changed by the ISE, Inc. Board with the approval of the affirmative vote of the holders of two-thirds of the voting power of the then outstanding shares of Class A Common Stock. ISE, Inc. Amended Certificate, Article Seventh.

²⁷ "Non-Industry Director" means a director that meets the requirements of "non-industry representative." Proposed LLC Constitution, Section 3.2(b). The term "non-industry representative" means any person who would not be considered an "industry representative," 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 or (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. Proposed LLC Constitution, Section 13.1(w). These definitions are the same as the current definitions. See ISE, Inc. Amended Constitution, Sections 3.2(b) and 14.1(q).

of ISE, LLC.²⁸ Each year, the Nominating Committee, which is not a committee of the LLC Board, will nominate the Exchange Directors, and the Corporate Governance Committee, which is a committee of the LLC Board, will nominate the Non-Industry Directors.²⁹ Holders of Exchange Rights also may nominate Exchange Directors by petition.³⁰ The initial members of the LLC Board were the individuals serving as directors of ISE, Inc. on the date of formation of ISE, LLC.³¹ Similar to the manner of election of the current ISE, Inc. Board, at the first annual meeting of the sole LLC member and holders of Exchange Rights and at each subsequent annual meeting, ISE Holdings will elect the Non-Industry Directors, and holders of Exchange Rights will elect the Exchange Directors, to serve until the next annual meeting or until their successors are elected and qualified.³² The Chairman of the LLC Board is a Non-Industry Director who is elected by the LLC Board. Each director of ISE, LLC holds office for a term of two years, except the Chief Executive Officer of ISE, LLC who holds office for a term of one year or such earlier time as such person no longer serves as Chief Executive Officer. The directors, other than the Chief Executive Officer, are divided into two classes, designated as Class I and Class II directors. At each annual meeting, the successors of the class of directors whose term expires at that meeting will be elected to hold office for a term expiring at the annual meeting held in the second year

²⁸ Proposed LLC Agreement, Section 5.2 and proposed LLC Constitution, Section 3.2(b). Pursuant to Section 4.6 of proposed LLC Constitution, the Chief Executive Officer of ISE, LLC is elected by the LLC Board and will be nominated by the LLC Board for a directorship by virtue of his or her office.

²⁹ See proposed LLC Constitution, Section 3.10. See also ISE, Inc. Amended Constitution, Section 3.10.

³⁰ ISE, Inc. represents that the petition process following the Reorganization will be substantially similar to the petition process in place currently for ISE, Inc., except that petitions submitted for nominees for Exchange Directors of ISE, LLC will not be required to contain all the information that is required to be disclosed pursuant to Regulation 14A under the Act since ISE, LLC will not be subject to the proxy requirements under the Act. In addition, for purposes of determining whether a person has been nominated for election by petition by the requisite percentage set forth in the proposed LLC Constitution, no Exchange Member, alone or together with its affiliates, may account for more than fifty percent (50%) of the signatures of the holders of outstanding Exchange Rights of the series entitled to elect such person, and any such signatures by such Exchange Member, alone or together with its affiliates, in excess of such fifty percent (50%) limitation shall be disregarded. *Id.*

³¹ The current directors of ISE, LLC are the same directors of ISE, Inc. immediately following the 2005 Annual Meeting of Stockholders of ISE, Inc.

³² See proposed LLC Constitution, Section 3.2(c). See also Amendment No. 2, *supra* note 3.

following the year of their election and until their successors are elected and qualified. If there is a vacancy on the LLC Board, the vacancy will be filled by the LLC Board, and the person chosen to fill the vacancy will serve until the expiration of the term of office of the class to which such person was elected. No Exchange Director may serve more than three consecutive terms, and, after a two-year hiatus, may be eligible to serve as an Exchange Director again.³³

ISE, LLC will have a Finance & Audit Committee, a Corporate Governance Committee, and a Compensation Committee, all of which will be governed by charters.³⁴ As is currently the case with respect to ISE, Inc. and its shares of Class B Common Stock, ISE, LLC will require ownership of an Exchange Right as a predicate to obtaining the trading rights and privileges associated with such Exchange Right.³⁵ Holders of PMM and CMM Rights will be entitled to the same Core Rights to which the holders of Series B-1 Common Stock and Series B-2 Common Stock are entitled with respect to ISE, Inc.³⁶

ISE, LLC will have officers, including a President and Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Chief Information Officer, Chief Regulatory Officer, and Chief Marketing Officer, who will manage the business and affairs of ISE, LLC, subject to the oversight of the LLC Board and, in some cases, the approval of ISE Holdings as the sole LLC member.³⁷ The initial officers of ISE, LLC will be the individuals currently serving as the officers of ISE, Inc.

The organizational documents of ISE, LLC will differ from the ISE, Inc.'s organizational documents in several notable respects. Because ISE, LLC is not a corporation and has limited

³³ Proposed LLC Constitution, Section 3.2(e). ISE, Inc. did not impose term limits on Non-Industry Directors, and ISE, LLC does not propose to do so, though the ISE, LLC Corporate Governance Committee may determine whether and how to provide for such term limits at a later time.

³⁴ Proposed LLC Constitution, Sections 5.4, 5.5 and 5.6. ISE, Inc. proposes that the LLC Board may designate additional committees by resolution passed by a majority of the whole LLC Board. Proposed LLC Constitution, Section 5.1. Currently, the ISE, Inc. Board may designate additional committees by a resolution of a majority of a quorum. ISE, Inc. Amended Constitution, Section 5.1.

³⁵ ISE, Inc. Amended Certificate, Article Fourth, Subdivision II(b)(ii) and proposed LLC Agreement, Section 6.2.

³⁶ ISE, Inc. Amended Certificate, Article Fourth, Subdivision II(b)(v)(B) and proposed LLC Agreement, Section 6.3(b).

³⁷ Under Delaware law, certain events such as a sale of all or substantially all of the assets, merger, or liquidation of ISE, LLC may require the approval of ISE Holdings.

liability members instead of stockholders, ISE Holdings and Exchange Right holders will not have voting, dividend, and liquidation rights typically associated with common stock under state corporate law.³⁸ For example, the LLC Act does not statutorily confer the same or similar voting rights on limited liability members as are conferred to stockholders, pursuant to the Delaware General Corporation Law. Accordingly, following the Reorganization, the sole LLC member and the Exchange Right holders will not statutorily be entitled to vote on certain items with respect to which the holders of Class A and Class B Common Stock would have had a voting right (*i.e.*, an increase or decrease in the aggregate number of authorized shares of Class A or Class B Common Stock, a change in par value, and any alteration or change in the powers, preferences, or special rights of the shares so as to affect them adversely).

ISE, Inc. notes that some of these items are irrelevant in the context of a wholly-owned limited liability company (*e.g.*, the notion of par value and certain Class A holder voting rights that instead will be relevant at the ISE Holdings level), but where still relevant and practical, ISE, Inc. has attempted to preserve in proposed LLC Agreement and proposed LLC Constitution certain rights of the holders of Class B Common Stock following the Reorganization. As a result, holders of Exchange Rights will continue to be entitled to vote with respect to the Core Rights (that is, any increase in the number of PMM Rights or CMM Rights to be approved by holders of a majority of PMM Rights, voting as a separate class, and CMM Rights, voting as a separate class) and with respect to any amendments that would alter or change the powers, preferences, or special rights of one or more series of Exchange Rights so as to affect them adversely (to be approved by holders of a majority of Exchange Rights entitled to vote thereon).³⁹

Also, since ISE, LLC will have ISE Holdings as its sole LLC member, ISE, Inc. deems certain of the antitakeover

³⁸ Because Exchange Rights will not have "par value" following the Reorganization, holders of EAMs also will not be entitled to a return of the \$0.01 par value per share upon withdrawal from ISE, LLC. Additionally, the holders of Exchange Rights will not be "members" of ISE, LLC for purposes of the Delaware Limited Liability Company Act (the "LLC Act"). Proposed LLC Agreement, Section 6.1.

³⁹ The sole LLC member will have a similar right to approve amendments to the proposed LLC Constitution if such amendments would alter or change the powers, preferences, or special rights of the sole LLC member so as to affect it adversely. Proposed LLC Agreement, Section 8.1 and proposed LLC Constitution, Section 10.1.

provisions in the ISE, Inc. organizational documents less necessary for ISE, LLC. Specifically, ISE, LLC's organizational documents will not: (1) Deny the right of ISE Holdings to call a special meeting; (2) require "advance notice" of ISE Holdings' or Exchange Right holders' proposals; (3) except as described herein, impose an ownership or voting limitation on ISE Holdings (or any corrective mechanism with respect to any ownership limitation);⁴⁰ or (4) require any super-majority votes with respect to certain significant matters, such as mergers.⁴¹

b. Description of ISE Holdings

i. General

ISE Holdings will be governed by the Holdings Certificate and the Holdings Bylaws. ISE Holdings will not cause ISE, LLC to be operated in a manner inconsistent with ISE, LLC's regulatory and oversight functions.⁴² The Holdings Certificate and Holdings Bylaws, as well as the LLC Agreement and LLC Constitution, are intended to ensure that the Reorganization will not unduly

⁴⁰ ISE, Inc. notes that ownership and voting limitations will not be relevant to a wholly owned subsidiary of a holding company, although ISE Holdings itself will have substantially the same ownership and voting limitations that ISE, Inc. currently has, as described below. Additionally, as stated earlier, ISE, LLC will continue to have a trading concentration limit and 20% member ownership limit pursuant to ISE Rule 303(b), except as described herein, and proposed LLC Agreement, Section 6.5. See *supra* note 11 for a discussion of certain modifications to ISE Rule 303(b) approved in a separate rule filing by the Commission. See also Amendment No. 2, *supra* note 3.

⁴¹ For the text of the current antitakeover provisions, see ISE, Inc. Amended Certificate, Article Eighth and ISE, Inc. Amended Constitution, Section 2.2 (pertaining to calling a special meeting); ISE, Inc. Amended Constitution, Section 2.7 (pertaining to "advance notice" provisions); ISE, Inc. Amended Certificate, Article Fourth, Subdivision III (pertaining to ownership and voting limitations); and ISE, Inc. Amended Certificate, Article Seventh (pertaining to super-majority votes). In addition, because ISE, LLC will be a wholly-owned subsidiary of ISE Holdings, and ISE Holdings will be entitled to elect a majority of the LLC Board, it is deemed less necessary to allow the sole LLC member to amend the proposed LLC Constitution (currently, ISE, Inc. stockholders representing at least a majority of the voting power may amend the ISE, Inc. Amended Constitution). However, the sole LLC member has the right to approve amendments to proposed LLC Constitution if such amendments would alter or change the powers, preferences, or special rights of the sole LLC member so as to affect it adversely. For the text of the current power to amend the ISE, Inc. Amended Constitution, see ISE, Inc. Amended Constitution, Section 11.1. For the text of the proposed power to amend the LLC Constitution, see proposed LLC Constitution, Section 10.1.

⁴² In particular, ISE Holdings, its officers, directors, and employees will give due regard to the preservation of the independence of the self-regulatory function of ISE, LLC and will not interfere with the effectuation of any decision by the LLC Board relating to such function. Proposed Holdings Bylaws, Section 1.5.

interfere with or restrict the ability of ISE, LLC or the Commission to effectively carry out their respective regulatory oversight responsibilities under the Act and generally to enable ISE, LLC to operate in a manner that complies with the Federal securities laws, including furthering the objectives of Section 6(b)(5) of the Act.⁴³ In addition, ISE Holdings and its officers, directors, employees, and agents will be required to submit to the jurisdiction of the U.S. Federal courts, the Commission, and ISE, LLC for the purposes of any suit, action, or proceeding, pursuant to the U.S. Federal securities laws and the rules or regulations thereunder arising out of, or relating to, the activities of ISE, LLC and will waive any claims of inconvenient forum or improper venue.⁴⁴

The ISE Holdings Common Stock will have the traditional features of common stock, including voting, dividend, and liquidation rights.⁴⁵ Except as described below, the holders of ISE Holdings Common Stock will be entitled to vote on all matters submitted to the stockholders for a vote, and, except as discussed below, each holder will have one vote per share of ISE Holdings Common Stock owned.⁴⁶ As discussed further below, holders of ISE Holdings Common Stock will be subject to substantially the same ownership and voting limitations with respect to ISE Holdings Common Stock to which the holders of Class A Common Stock currently are subject.

ii. Organization, Management and Governance of ISE Holdings

ISE Holdings will be governed under the direction of the Holdings Board. The number of directors shall be fixed by resolution of the Holdings Board and is expected to be nine immediately following the Reorganization.⁴⁷ Each year, the Corporate Governance Committee of ISE Holdings will nominate candidates for election as directors for the class of directors standing for election at the ISE Holdings annual meeting of stockholders.⁴⁸ As required by the New York Stock

⁴³ 15 U.S.C. 78f(b)(5).

⁴⁴ Proposed Holdings Bylaws, Section 1.4. ISE Holdings and its officers, directors, employees, and agents will also maintain an agent for service of process in the U.S. *Id.*

⁴⁵ ISE Holdings will be authorized to pay dividends to the stockholders of ISE Holdings as and when declared by the Holdings Board.

⁴⁶ ISE Holdings may issue preferred stock in the future, the terms of which will be determined by the Holdings Board.

⁴⁷ The Holdings Board is currently comprised of two directors; one is the Chief Executive Officer of ISE, Inc., and the other is the Secretary of ISE, Inc.

⁴⁸ Proposed Holdings Bylaws, Section 3.10(c).

Exchange, Inc. (the "NYSE"), where the Class A Common Stock currently trades and where ISE, Inc. intends that the ISE Holdings Common Stock will be listed and traded, a majority of the directors of ISE Holdings must be deemed "independent" within the meaning of the NYSE's listing standards.⁴⁹ The directors of ISE Holdings, other than the Chief Executive Officer of ISE Holdings, will be divided into two classes and will be elected by a plurality of the votes cast by stockholders at each annual meeting of stockholders at which a quorum is present.⁵⁰ The directors will serve staggered two-year terms, with the term of office of one class expiring each year.⁵¹ The Chief Executive Officer will hold office for a term of one year or such earlier time as such person no longer serves as Chief Executive Officer.⁵² The Chairman of the Holdings Board will be elected by the Holdings Board. If there is a vacancy on the Holdings Board, the vacancy will be filled by the Holdings Board, and the person elected to fill the vacancy will serve until the expiration of the term of office of the class to which such person was elected.⁵³

ISE Holdings will have officers, including a President and Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Chief Information Officer, General Counsel, and Chief Marketing Officer, who will manage the business and affairs of ISE Holdings, subject to the oversight of the Holdings Board. The initial officers of ISE Holdings will be the individuals currently serving as officers of ISE, Inc.

ISE Holdings will have a Board Executive Committee, Finance & Audit Committee, Compensation Committee, and a Corporate Governance Committee. The Finance & Audit, Compensation, and Corporate Governance committees will be governed by charters that comply with the NYSE's listing standards.

The Holdings Certificate and Holdings Bylaws will contain substantially the same ownership limitations (including the same corrective mechanisms), voting limitations, and antitakeover provisions⁵⁴ that are contained in the

⁴⁹ Section 303A of the NYSE Listed Company Manual.

⁵⁰ Proposed Holdings Certificate, Article Fifth.

⁵¹ *Id.* ISE, Inc. represents that it will address term limits, if any, in ISE Holdings' Corporate Governance Principles to be adopted in connection with the Reorganization.

⁵² *Id.*

⁵³ Proposed Holdings Bylaws, Section 3.3.

⁵⁴ The antitakeover provisions relate to such things as special meetings of stockholders, required stockholder vote with respect to certain actions, and advance notice of stockholder proposals (including

ISE, Inc. Amended Certificate and ISE, Inc. Amended Constitution.⁵⁵ If a Person, either alone or with its Related Persons,⁵⁶ beneficially owns shares of stock of ISE Holdings in violation of the relevant ownership limitation, ISE Holdings will apply substantially the same corrective procedures that were approved by the Commission in connection with ISE, Inc.'s initial public offering.⁵⁷ ISE, Inc. believes that the ownership and voting limitations will prevent any stockholder or group of stockholders acting together from exercising undue control over the operation of ISE, LLC.⁵⁸ Specifically, ISE, Inc. believes that these ownership and voting limitations are 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 without Commission review and, more importantly, that may be adverse to ISE, LLC's or the Commission's regulatory oversight responsibilities. ISE, Inc. also believes that these provisions serve to protect the integrity of ISE, LLC's and the Commission's regulatory oversight responsibilities and allow the Commission to review, and subject to public notice and comment, the acquisition of substantial ownership or voting power by any stockholder or group of stockholders.

iii. Exchange-Related Matters

Pursuant to the Holdings Certificate, in discharging his or her responsibilities as a member of the Holdings Board, each director shall take into consideration the effect that ISE Holdings's actions would have on the ability of ISE, LLC to carry out its responsibilities under the Act and on

the nomination of directors). Proposed Holdings Bylaws, Article II.

⁵⁵ See IPO Order, *supra* note 4. For the sake of clarity, ISE, Inc. notes that the Special Trustee (as defined in the ISE, Inc. Amended Certificate and proposed Holdings Certificate) who holds the Excess Shares (as defined in the ISE, Inc. Amended Certificate and proposed Holdings Certificate) is currently ISE, Inc. and, after the Reorganization, will be ISE Holdings and that in each instance, ISE, Inc. and ISE Holdings can also appoint a special trustee who is unaffiliated with it or any Person or Related Person owning Excess Shares. ISE, Inc. Amended Certificate, Article Fourth, Subdivision III(c)(ii) and proposed Holdings Certificate, Article Fourth, Subdivision III(c)(ii).

⁵⁶ See *supra* note 10.

⁵⁷ See *supra* note 4 (implementing corrective procedures relating to the ownership limitations) and ISE, Inc. Amended Certificate, Article Fourth, Subdivision III(c) (setting forth the corrective procedures relating to the ownership limitations).

⁵⁸ ISE, Inc. also believes that, much like the 20% member ownership limitation, the 20% voting limitation cannot be waived by the Holdings Board with respect to members.

the ability of ISE, LLC and ISE Holdings to engage in conduct that fosters and does not interfere with ISE, LLC's and ISE Holdings' 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.⁵⁹ In addition, in discharging his or her responsibilities as a member of the Holdings Board, each director shall comply with the Federal securities laws and rules and regulations thereunder and cooperate with ISE, LLC and the Commission.⁶⁰ Furthermore, in discharging his or her responsibilities as an officer or employee of ISE Holdings, each officer or employee shall comply with the Federal securities laws and rules and regulations thereunder and shall cooperate with ISE, LLC and the Commission.⁶¹

Moreover, for so long as ISE Holdings controls, directly or indirectly, ISE, LLC, each officer, director, and employee of ISE Holdings shall give due regard to the preservation of the independence of the self-regulatory function of ISE, LLC and to ISE, LLC's obligations under the Act and the rules thereunder, including, without limitation, Section 6(b) of the Act⁶² and shall not take any actions which he or she knows or reasonably should have known would interfere with the effectuation of any decisions by the LLC Board relating to ISE, LLC's regulatory functions (including disciplinary matters) or which would adversely affect the ability of ISE, LLC to carry out ISE, LLC's responsibilities under the Act.⁶³

ISE, Inc. believes that these provisions would help ensure that directors, officers, and employees of ISE Holdings are cognizant of, and take into account, when carrying out their duties and responsibilities as directors, officers, and employees of ISE Holdings, the fact

⁵⁹ Proposed Holdings Certificate, Article Twelfth.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² 15 U.S.C. 78f(b).

⁶³ Proposed Holdings Bylaws, Section 1.5. ISE Holdings also will take reasonable steps necessary to cause its officers, directors, and employees prior to accepting a position as such to consent in writing to the applicability to them of Article Twelfth, Article Thirteenth and Article Fourteenth of proposed Holdings Certificate and Sections 1.4 and 1.5 of proposed Holdings Bylaws, as applicable, with respect to their activities related to ISE, LLC. Proposed Holdings Bylaws, Section 1.6.

that ISE Holdings would operate an exchange that is subject to regulatory oversight by the Commission and that the ISE, LLC is required to be operated in compliance with Federal securities laws. ISE, Inc. believes that these provisions also would help ensure that the Commission is able to effectively fulfill its regulatory obligations with respect to ISE, LLC.

Pursuant to the Holdings Certificate and Holdings Bylaws, for so long as ISE Holdings controls, directly or indirectly, ISE, LLC, any amendment to the Holdings Certificate and Holdings Bylaws must be submitted by the Holdings Board to the LLC Board and, if the LLC Board determines that such amendment is required, under Section 19 of the Act⁶⁴ and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before such amendment may be effective under Section 19 of the Act and the rules promulgated thereunder, then such amendment shall not be filed with the Secretary of State of the State of Delaware until filed with, or filed and approved by, the Commission, as the case may be.⁶⁵ In short, if the LLC Board determines that an amendment to the Holdings Certificate and Holdings Bylaws must be filed with, or filed with and approved by, the Commission as a proposed rule change pursuant to Section 19 of the Act and Rule 19b-4 thereunder,⁶⁶ such amendment will not become effective until it becomes effective pursuant to the Rule 19b-4 filing process.

ISE, Inc. believes that these provisions would help to preserve the ability of ISE, LLC to carry out its regulatory responsibilities under the Act and would help to provide the Commission with the ability to review and subject to public notice and comment any changes in proposed Holdings Certificate and proposed Holdings Bylaws that could have the potential to affect ISE, LLC's and the Commission's regulatory responsibilities regarding ISE, LLC.

Pursuant to proposed Holdings Certificate, all confidential information pertaining to the self-regulatory function of ISE, LLC (including but not limited to disciplinary matters, trading data, trading practices, and audit information) contained in books and records of ISE, LLC that shall come into the possession of ISE Holdings shall: (1) Not be made available to any Persons (other than as provided below) other than to those

⁶⁴ 15 U.S.C. 78s.

⁶⁵ Proposed Holdings Certificate, Article Sixteenth and proposed Holdings Bylaws, Section 10.1.

⁶⁶ 15 U.S.C. 78s and 17 CFR 19b-4.

officers, directors, employees, and agents of ISE Holdings that have a reasonable need to know the contents thereof; (2) be retained in confidence by ISE Holdings and the officers, directors, employees, and agents of ISE Holdings; and (3) not be used for any commercial purposes. Nothing in the Holdings Certificate shall be interpreted to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the Federal securities laws and rules and regulations thereunder or to limit or impede the ability of any officers, directors, employees, or agents of ISE Holdings to disclose such confidential information to the Commission.⁶⁷

For so long as ISE Holdings controls, directly or indirectly, ISE, LLC, the books, records, premises, officers, directors, and employees of ISE Holdings shall be deemed to be the books, records, premises, officers, directors, and employees of ISE, LLC for purposes of and subject to oversight pursuant to the Act but only to the extent they relate to the exchange business of ISE, LLC.⁶⁸ In addition, the books and records of ISE, LLC and ISE Holdings will be kept within the U.S.⁶⁹ ISE, Inc. believes that these provisions would help to ensure access to ISE Holdings' books and records by the Commission and, to the extent ISE Holdings' books and records relate to the operation or administration of ISE, LLC, would help enable the Commission to carry out its regulatory responsibilities regarding ISE, LLC.

Pursuant to proposed Holdings Certificate, ISE Holdings shall comply with the Federal securities laws and rules and regulations thereunder and shall cooperate with ISE, LLC and the Commission, pursuant to their respective regulatory authority.⁷⁰ In addition, ISE Holdings shall take reasonable steps necessary to cause its agents to cooperate with ISE, LLC and the Commission, pursuant to their respective regulatory authority with respect to such agents' activities related to ISE, LLC.⁷¹ ISE, Inc. believes that these provisions would help to ensure that ISE Holdings will not interfere with the Commission's regulatory responsibilities by ensuring that ISE Holdings will comply with Federal securities laws, cooperates with ISE, LLC and the Commission pursuant to

their respective regulatory authority, and takes reasonable steps to ensure that its agents do not interfere with the Commission's ability to carry out its regulatory responsibilities.

ISE, Inc. believes that the Reorganization will permit ISE, LLC to continue ISE, Inc.'s current function as a national securities exchange while its corporate parent, ISE Holdings, may, through greater organizational flexibility, facilitate access to capital markets, promote new business opportunities, facilitate future acquisitions and the formation of strategic alliances, and create a framework for future growth.

2. Statutory Basis

ISE, Inc. believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.⁷² The Exchange believes that the proposal is consistent with the requirement under Section 6(b)(1) of the Act⁷³ that an exchange be so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d)⁷⁴ or 19(g)(2)⁷⁵ of the Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. ISE, Inc. also believes this proposed rule change furthers the objective of Section 6(b)(5) of the Act⁷⁶ that an exchange have rules that, among other things, are designed 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.

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

ISE, Inc. believes that the proposed rule change does not impose any burden on competition.

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

ISE, Inc. has not solicited, and does not intend to solicit, comments on this

proposed rule change. ISE, Inc. 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 35 days of the date of publication of this notice in the **Federal Register** or within such other 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 self-regulatory organization 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.

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. Please include File No. SR-ISE-2006-04 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-ISE-2006-04. 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

⁶⁷ Proposed Holdings Certificate, Article Thirteenth.

⁶⁸ Proposed Holdings Certificate, Article Fourteenth.

⁶⁹ Proposed Holdings Bylaws, Section 1.3.

⁷⁰ Proposed Holdings Certificate, Article Fifteenth.

⁷¹ *Id.*

⁷² 15 U.S.C. 78f(b). See also Amendment No. 2, *supra* note 3.

⁷³ 15 U.S.C. 78f(b)(1).

⁷⁴ 15 U.S.C. 78q(d).

⁷⁵ 15 U.S.C. 78s(g)(2).

⁷⁶ 15 U.S.C. 78f(b)(5).

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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-2006-04 and should be submitted by April 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷⁷

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53472; File No. SR-NYSE-2006-18]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 104, Dealings by Specialists

March 13, 2006.

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 March 8, 2006, the New York Stock Exchange, LLC ("NYSE" or the "Exchange") 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 Exchange. The Exchange filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ upon filing with the Commission.⁵ 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 Exchange proposes to amend NYSE Rules 104.12 and .13 concerning investment accounts and investment positions in specialty securities for securities issued by the Exchange. The text of the proposed rule change is available on NYSE's Web site, <http://www.nyse.com>, at NYSE's principal office, 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. 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

NYSE Rule 104 (Dealings by Specialists) governs specialists' dealings in their specialty securities. Trades conducted by a specialist in specialty securities are effected in the specialist's dealer account. Under NYSE Rule 104.12, a specialist may assign part of his or her dealer account position to an investment account, provided that such assignment does not create a short position in the specialist's dealer account.

Additionally, NYSE Rule 104.12 prohibits the assignment to the investment account of any position or part thereof that was purchased on nonstabilizing ticks, *i.e.*, a "plus" tick (at a price higher than the last trade) or "zero plus tick" (higher than the last different trade). In order to assign a position to an investment account, a specialist's purchases in that security must be at least 75% stabilizing for that day and the calendar week encompassing the purchase of that security.

Similarly, positions in the dealer account are netted with positions in an investment account. Thus, if the specialist is short in the dealer account, but has a long position in the investment account that exceeds the short dealer position, the specialist is considered to be net long. In that

situation, a specialist may not liquidate the short dealer account position by purchasing on a plus tick; nor may the specialist purchase on a zero plus tick more than 50% of the stock that is being offered in the market at that time, and, in no event may the specialist purchase the final 100 shares offered.

NYSE Rule 104.13 requires that transactions effected in specialty stocks for the accounts of specified persons affiliated with or related to a specialist must be for investment purposes and executed in accordance with certain restrictions relating to the price at which transactions may take place, known as "tick" restrictions. The accounts specified in the rule include accounts of employees or parties active in the business of the specialist, the spouse or children residing in the same household as a specialist or person active in the specialist business, and any approved person (individual or entity in a control relationship) of the specialist, other than an approved person entitled to an exemption pursuant to NYSE Rule 98 (Restrictions on an Approved Person Associated with a Specialist's Member Organization).

NYSE-Archipelago Merger. The merger of NYSE and Archipelago Holdings, Inc. has received Commission approval and was completed on March 7, 2006.⁶ Trading in the common stock of the newly-formed, publicly-traded holding company NYSE Group, Inc. on the Exchange will commence on March 8, 2006, under the symbol "NYX."

Under the terms of the merger, members of the Exchange, *i.e.*, seaholders on the NYSE, will receive shares of NYX stock in exchange for their membership interests. In certain circumstances, where the purchase of an Exchange membership was the subject of a financing arrangement with the member organization a seat holder was associated with, the member organization will be eligible to receive the NYX shares being exchanged for a membership. These NYX shares will be held in a special account separate from the specialist's dealer and investment accounts.

The NYX shares received as a result of this exchange will be subject to transfer restrictions set forth in the amended and restated Certificate of Incorporation of NYSE Group, Inc. These transfer restrictions prohibit any direct or indirect assignment, sale, exchange, transfer, tender or any other disposition of NYX shares. Except as otherwise provided in Article IV,

⁶ See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77).

⁷⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The NYSE has asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. See Section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(1), 17 CFR 240.19b-4(f)(6)(iii).