

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68740; File No. SR-ISE-2013-07)

January 28, 2013

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change to Amend the International Securities Exchange, LLC Amended and Restated Constitution

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 18, 2013, the International Securities Exchange, LLC (“Exchange” or “ISE”) 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 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 amend its Amended and Restated Constitution³ (the “Constitution”) to: (i) declassify the Non-Industry Directors (including the Public Directors) of the Board; (ii) change the term of the Non-Industry Directors (including the Public Directors) and the Former Employee Director to a one (1) year term, subject to re-election; and (iii) eliminate the three-term limit for the Former Employee Director. Currently, Section 3.2(c) of the Constitution requires, in part, that Non-Industry Directors (including the Public Directors)⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amended and Restated Constitution of International Securities Exchange, LLC (last amended December 28, 2007).

⁴ Section 3.2(b)(iv) of the Constitution requires that the Board be composed of eight (8) Non-Industry Directors (at least two (2) of which are Public Directors) elected by the Sole LLC Member.

and Exchange Directors⁵ be classified into two classes designated as Class I and Class II directors, and that all Directors (including the Former Employee Director)⁶ serve two (2) year terms, subject to re-election. The text of the proposed rule change is available on the Exchange's website www.ise.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 Exchange 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 this proposed rule change is to amend the Constitution: (i) to declassify the Non-Industry Directors (including the Public Directors) of the Board; (ii) to change the term of the Non-Industry Directors (including the Public Directors) and the Former Employee Director to a one (1) year term, subject to re-election; and (iii) eliminate the three-term limit for the Former Employee Director. Currently, Section 3.2(c) of the Constitution requires, in part, that Non-Industry Directors

⁵ Section 3.2(b)(i)-(iii) of the Constitution requires that the Board be composed of six (6) Exchange Directors elected by the holders of Exchange Rights.

⁶ Section 3.2(b)(vi) of the Constitution allows the Sole LLC Member, in its sole and absolute discretion, [sic] elect one (1) additional director who shall meet the requirements of "Non- Industry Directors," except that such person was employed by the Exchange at any time during the three (3) year period prior to his or her initial election.

(including the Public Directors)⁷ and Exchange Directors⁸ be classified into two classes designated as Class I and Class II directors, and that all Directors (including the Former Employee Director)⁹ serve two (2) year terms, subject to re-election.

The Exchange proposes that Section 3.2(c) of the Constitution be amended to remove any references to Class I directors or Class II directors as such terms relate to Non-Industry Directors (including the Public Directors), and state that the Non-Industry Directors (including the Public Directors) would hold office for a one (1) year term, subject to re-election, as follows:

“[t]he Non-Industry Directors and the Public Directors shall hold office for a term expiring at the annual meeting of the Sole LLC Member and holders of Exchange Rights held in the first year following the year of their election, and until their successors are elected and qualified.”

For the avoidance of doubt, Non-Industry Directors (including the Public Directors) would continue to be elected by the Sole LLC Member at each annual meeting of the Sole LLC Member and holders of Exchange Rights in accordance with Section 3.2 of the Constitution.

The Exchange further proposes to modify the term of the Former Employee Director so that any such director shall hold office for a one (1) year term, subject to re-election, and to make such corresponding technical changes to the applicable parts of Section 3.2(c). Furthermore, the

⁷ Section 3.2(b)(iv) of the Constitution requires that the Board be composed of eight (8) Non-Industry Directors (at least two (2) of which are Public Directors) elected by the Sole LLC Member.

⁸ Section 3.2(b)(i)-(iii) of the Constitution requires that the Board be composed of six (6) Exchange Directors elected by the holders of Exchange Rights.

⁹ Section 3.2(b)(vi) of the Constitution allows the Sole LLC Member, in its sole and absolute discretion, elect one (1) additional director who shall meet the requirements of “Non- Industry Directors,” except that such person was employed by the Exchange at any time during the three (3) year period prior to his or her initial election.

Exchange proposes to eliminate the three-term limit for the Former Employee Director.¹⁰ Upon modification of the two (2) year term to a one (1) year term, the Former Employee Director would qualify to become a Non-Industry Director after serving on the Board of Directors for three (3) years as he/she would no longer have been employed by the Exchange in the previous three (3) year period prior to his or her initial election. As such, there is no need for the three-term limit upon modification of the two (2) year term to a one (1) year term.

ISE believes that the declassification of the Non-Industry Directors (including the Public Directors), and the institution of a one year term for Non-Industry Directors (including the Public Directors) and the Former Employee Director, subject to reelection, would allow the Exchange to align its Board structure in accordance with corporate governance best practices guidelines which advocate the repeal of classified/staggered boards and the annual elections of directors, including, but not limited to, the Institutional Shareholder Services Proxy Voting Guidelines, the CalPERS Core Principles of Accountable Corporate Governance, the TIAA-CREF Policy Statement on Corporate Governance, and the AFI-CIO Proxy Voting Guidelines. The Exchange notes that just because it has one shareholder, the Sole LLC Member, as opposed to many shareholders in a public company, the Exchange nonetheless believes that the adherence to the aforementioned corporate governance best practices guidelines are beneficial to the Exchange in that it provides for flexibility, transparency, and accountability for the sole shareholder, and ultimately for the members of the Exchange and the customers of the Exchange members. Specifically, the Exchange believes that the proposed modifications to the Constitution would provide it with the most flexibility to structure

¹⁰ Section 3.2(e)(iv) of the Constitution provides that a Former Employee Director may not serve on the Board of Directors for more than three (3) consecutive terms. Any such director may be eligible for election as a director following a two-year hiatus from service on the Board of Directors, provided, that he or she meets the director qualifications pursuant to Section 3.2(b).

the Board of Directors in a way that is most effective for: (i) attracting and keeping Non-Industry Directors (including Public Directors) and the Former Employee Director who provide valuable insight and knowledge to the Board; (ii) providing the Sole LLC Member with the ability to evaluate and hold Non-Industry Directors (including Public Directors) and the Former Employee Director accountable on an annual basis; and (iii) removing underperforming, inactive, or ineffective Non-Industry Directors (including Public Directors) and the Former Employee Director who may be detrimental to the enhancement of long-term corporate value.

Notwithstanding any of the foregoing, the Exchange is not proposing any changes to the current requirements in the Constitution which specify that Exchange Directors serve two (2) year terms in a classified/staggered manner as the Exchange believes that the current structure continues to be an effective and practical mechanism for ensuring continuity and fair representation of the Exchange's membership on the Board. Exchange Directors represent the membership of the Exchange on the Board of Directors and because of the direct connection between the Exchange's business and each Exchange Director's underlying business, Exchange Directors provide a very different perspective from the Non-Industry Directors (including Public Directors) and the Former Employee Director. Specifically, Exchange Directors not only have an interest in seeing certain Exchange initiatives through to implementation, but are uniquely positioned to offer valuable feedback on such initiatives directly to the Board of Directors. Given the regulatory nature of the Exchange's business and the extended period of time necessary to see initiatives through to implementation, it is the Exchange's belief and experience that a term longer than one (1) year is necessary for Exchange Directors to achieve the full benefit of participation of the Board. Furthermore, the Exchange believes that the classified structure of the Exchange Directors allows for a more consistent representation of the Exchange's membership on the Board of Directors. By

never having a whole slate of new Exchange Directors join the Board at the same time, the Exchange believes that the classified structure allows incumbent Exchange Directors to provide leadership and continuity to new Exchange Directors and the Board of Directors, as a whole.

The Exchange proposes that the declassification changes to the Board of Directors be implemented through a gradual process in which each current Non-Industry Director (including the Public Directors) will serve out the remainder of his or her two (2) year term and at the end of such term, the election or re-election of such Non-Industry Director (including the Public Directors) vacancy will be for a one (1) year term. This gradual process would result in a fully declassified Board of Directors at the conclusion of the Exchange's 2014 annual meeting of the Sole LLC Member and holders of Exchange Rights.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(1) that an exchange be so organized so as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Exchange Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder and the rules of the Exchange. The Exchange also believes this proposed rule change furthers the objective of Section 6(b)(5) that an exchange have rules that, among other things, are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation with persons engaged in 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 because the proposed rule change does not modify the structure of the Exchange Directors, the Exchange continues to be organized so as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Exchange Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder and the rules of the Exchange. Furthermore, aligning the structure of the Non-Industry Directors (including the Public Directors) and the Former Employee Director in accordance with corporate governance best practices guidelines would ensure that the Exchange continues to have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change protects investors and the public interest by providing the most flexibility to structure the Non-Industry Directors (including the Public Directors) and the Former Employee Director in a way that is most effective for: (i) attracting and keeping Non-Industry Directors (including Public Directors) and the Former Employee Director who provide valuable insight and knowledge to the Board; (ii) providing the Sole LLC Member with the ability to evaluate and hold Non-Industry Directors (including Public Directors) and the Former Employee Director accountable on an annual basis; and (iii) removing underperforming, inactive, or ineffective Non-Industry Directors (including Public Directors) and the Former Employee Director who may be detrimental to the enhancement of long-term corporate value.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition. Specifically, the proposed rule change only seeks to implement corporate governance best practices guidelines with respect to the structure of its Board of Directors and does not directly impact the Exchange's trading rules, its membership, or marketplace, and therefore does not implicate the competition analysis.

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

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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-ISE-2013-07 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2013-07. 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-ISE-2013-07, 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).