

take advantage of harnessing the potential of AI technology, and the challenges faced by institutions of higher education in retaining faculty and responding to explosive growth in student enrollment in AI-related courses and courses of study; (8) the specific steps that could be taken by the federal government, research institutes, universities, and philanthropies to encourage multi-disciplinary AI research; (9) specific training data sets that can accelerate the development of AI and its application; (10) the role that “market shaping” approaches such as incentive prizes and Advanced Market Commitments can play in accelerating the development of applications of AI to address societal needs, such as accelerated training for low and moderate income workers (see <https://www.usaid.gov/cii/market-shaping-primer>); and (11) any additional information related to AI research or policymaking, not requested above, that you believe OSTP should consider.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78119; File Nos. SR-ISE-2016-11; SR-ISE Gemini-2016-05; SR-ISE Mercury-2016-10]

Self-Regulatory Organizations; International Securities Exchange, LLC; ISE Gemini, LLC; ISE Mercury, LLC; Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment No. 1 Thereto, Relating to a Corporate Transaction in Which Nasdaq, Inc. Will Become the Indirect Parent of ISE, ISE Gemini, and ISE Mercury

June 21, 2016.

I. Introduction

On April 28, 2016, the International Securities Exchange, LLC (“ISE”), ISE Gemini, LLC (“ISE Gemini”), and ISE Mercury, LLC (“ISE Mercury”) (collectively, the “Exchanges”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and

Rule 19b-4 thereunder,² proposed rule changes in connection with the acquisition of the Exchanges’ indirect parent company, U.S. Exchange Holdings, Inc. (“U.S. Exchange Holdings”) by Nasdaq, Inc. (“Nasdaq”). The proposed rule changes were published for comment in the **Federal Register** on May 16, 2016.³ On June 10, 2016, the Exchanges each filed Amendment No. 1 to their respective proposed rule changes.⁴ The Commission received no comment letters on the proposed rule changes. This order provides notice of filing of Amendment No. 1 to each of the proposed rule changes and grants accelerated approval to the proposed rule changes, each as modified by Amendment No. 1.

II. Background

Currently, the Exchanges are wholly owned subsidiaries of International Securities Exchange Holdings, Inc. (“ISE Holdings”). ISE Holdings, in turn, is a wholly owned subsidiary of U.S. Exchange Holdings, which is wholly owned together by Deutsche Börse AG (“Deutsche Börse”) and Eurex Frankfurt AG (“Eurex Frankfurt”).⁵ On March 9, 2016, Deutsche Börse and Eurex Frankfurt entered into an agreement with Nasdaq, pursuant to which Nasdaq would acquire all of the capital stock of U.S. Exchange Holdings (the “Transaction”) and thereby indirectly all of the interests of the Exchanges.⁶ Nasdaq currently owns and operates three national securities exchanges, The NASDAQ Stock Market LLC (“NASDAQ Exchange”), NASDAQ PHLX LLC (“PHLX”), and NASDAQ BX, Inc. (“BX”).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 77794 (May 10, 2016), 81 FR 30351 (“ISE Notice”); 77795 (May 10, 2016), 81 FR 30386 (May 16, 2016) (“ISE Gemini Notice”); and 77796 (May 10, 2016), 81 FR 30403 (May 16, 2016) (“ISE Mercury Notice”).

⁴ See *infra* Section V (discussing the changes proposed in Amendment No. 1). Amendment No. 1 has been placed in the public comment file for SR-ISE-2016-11, SR-ISE Gemini-2016-05, and ISE Mercury-2016-10 at <https://www.sec.gov/comments/sr-ise-2016-11/ise201611-1.pdf>, <https://www.sec.gov/comments/sr-ise-gemini-2016-05/ise-gemini201605.shtml>, and <https://www.sec.gov/comments/sr-ise-mercury-2016-10/ise-mercury201610.shtml> (see letters from Michael Simon, Secretary, General Counsel, and Chief Regulatory Officer, ISE, ISE Gemini, and ISE Mercury, to Brent J. Fields, Secretary, Commission, dated June 13, 2016).

⁵ Eurex Frankfurt holds an 85% interest in U.S. Exchange Holdings, and Deutsche Börse holds the remaining 15%. In turn, Deutsche Börse holds a 100% interest in Eurex Frankfurt. See ISE Notice, *supra* note 3 at 30352.

⁶ See ISE Notice, *supra* note 3 at 30352; ISE Gemini Notice, *supra* note 3, at 30387; and ISE Mercury Notice, *supra* note 3, at 30404.

Following the closing of the Transaction, Deutsche Börse and Eurex Frankfurt will cease to be upstream owners of the Exchanges.⁷ The Exchanges will become indirect subsidiaries of Nasdaq, and Nasdaq will become the ultimate parent company of the Exchanges.⁸ The remaining upstream owners of the Exchanges, however, will remain the same. Namely, U.S. Exchange Holdings will remain the sole, direct owner of ISE Holdings, which, in turn, will continue to remain the sole, direct owner of the Exchanges.

In order to consummate the Transaction and reflect Nasdaq’s proposed ownership of U.S. Exchange Holdings, the Exchanges propose, upon closing of the Transaction, to eliminate certain corporate resolutions of Deutsche Börse and Eurex Frankfurt that were previously filed with the Commission as rules of the Exchanges and adopt Nasdaq’s Amended and Restated Certificate of Incorporation (“Nasdaq COI”) and Bylaws (“Nasdaq Bylaws”), and together with the Nasdaq COI, the “Nasdaq governing documents”) as rules of the Exchanges.⁹ The Exchanges also propose to amend certain provisions regarding ownership limits and voting limits of the Second Amended and Restated Certificate of Incorporation of ISE Holdings (“ISE Holdings COI”) and to amend the Third Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings (“U.S. Exchange Holdings COI”) to reflect that Nasdaq will hold all, and have the rights to vote all, authorized shares of stock of U.S. Exchange Holdings.¹⁰ Additionally, the Exchanges propose to eliminate the Third Amended and Restated Trust Agreement (the “Trust Agreement”) that exists among ISE Holdings, U.S. Exchange Holdings, and the Trustees (as defined therein), which was previously established as rules of the Exchanges,

⁷ See ISE Notice, *supra* note 3 at 30352; ISE Gemini Notice, *supra* note 3, at 30387; and ISE Mercury Notice, *supra* note 3, at 30404. Upon completion of the Transaction, the Exchanges will also cease to have any non-U.S. upstream owners. See *id.*

⁸ The Exchanges will also become affiliates of NASDAQ Exchange, PHLX, NASDAQ BX, Inc. BX, Boston Stock Exchange Clearing Corporation (“BSECC”), and Stock Clearing Corporation of Philadelphia (“SCCP”) through common, ultimate ownership by Nasdaq. See ISE Notice, *supra* note 3 at 30351; ISE Gemini Notice, *supra* note 3, at 30386; and ISE Mercury Notice, *supra* note 3, at 30403. Upon closing of the Transaction, Nasdaq will be the sole owner of eight self-regulatory organizations: ISE, ISE Gemini, ISE Mercury, NASDAQ Exchange, PHLX, BX, BSECC, and SCCP.

⁹ See *infra* Section III.A (Non-U.S. Upstream Owner Resolutions and Nasdaq Governing Documents).

¹⁰ See *infra* Section III.B (Ownership Limits and Voting Limits).

¹ 15 U.S.C. 78s(b)(1).

and delete related references to the Trust Agreement in the ISE Holdings COI and U.S. Exchange Holdings COI.¹¹ Finally, the Exchanges propose, as described below, to amend each of their existing rules limiting the affiliation between ISE, ISE Gemini, or ISE Mercury and their respective members.¹²

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.¹³ Specifically, the Commission finds that the proposals are consistent with Section 6(b)(1) of the Act,¹⁴ which requires that an exchange be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and 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. In addition, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Each of the Exchanges represents that it will continue to operate and conduct its regulated activities (including operating and regulating its market and members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction.¹⁶ The Exchanges also state that they will continue to operate as separate self-regulatory organizations (“SROs”) that are registered as national securities exchanges, with separate rules, membership rosters, and listings, distinct from the rules, membership rosters, and listings of other national

securities exchanges owned by Nasdaq.¹⁷ Further, as discussed in more detail below, the Commission believes that the proposed changes related to the Transaction will not impair the ability of the Commission or the Exchanges to discharge their respective responsibilities under the Act. Additionally, the Commission believes that the proposed rule changes will allow the Commission to continue to exercise its plenary regulatory authority over the Exchanges and continue to provide the Commission and the Exchanges with access to necessary information that will allow the Exchanges to comply, and enforce compliance, with the Act.¹⁸

A. Non-U.S. Upstream Owner Resolutions and Nasdaq Governing Documents

Section 19(b) of the Act,¹⁹ and Rule 19b–4 thereunder,²⁰ require an SRO to file proposed rule changes with the Commission. Although Deutsche Börse and Eurex Frankfurt are not SROs, their activities with respect to the operation of the Exchanges are required to be consistent, and not interfere, with the self-regulatory obligations of the Exchanges under their control. Accordingly, when they became owners of the Exchanges, either through an acquisition or through new exchange registrations, Deutsche Börse and Eurex Frankfurt each adopted resolutions (“Non-U.S. Upstream Owner Resolutions”), which were previously filed with and approved by the Commission as rules of the Exchanges,

to incorporate provisions regarding ownership, jurisdiction, books and records, and other matters related to their control of the Exchanges, as well as provisions regarding board members, officers, employees, and agents’ involvement in the activities of the Exchanges.²¹

Following the close of the Transaction, however, Deutsche Börse and Eurex Frankfurt will both cease to be non-U.S. upstream owners of the Exchanges. Accordingly, the Exchanges propose to delete the Non-U.S. Upstream Owner Resolutions, such that, as of the closing date of the Transaction, they will no longer be rules of the Exchanges. The Commission finds the deletion to be consistent with the Act. The deletion of the Non-U.S. Upstream Owner Resolutions as rules of the Exchanges is necessary to reflect the change in the upstream ownership of the Exchanges after the consummation of the Transaction.

Following the closing of the Transaction, Nasdaq will replace Deutsche Börse and Eurex Frankfurt as the ultimate parent company of the Exchanges. Although Nasdaq will not carry out regulatory functions as an SRO, as with Deutsche Börse and Eurex Frankfurt, its activities with respect to the operation of the Exchanges must be consistent with, and not interfere with, the Exchanges’ self-regulatory obligations. As a result, following the closing of the Transaction, certain provisions of the Nasdaq governing documents will become stated policies, practices, or interpretations of the Exchanges, and must therefore be filed as rules with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder.²² Accordingly, the Exchanges propose that the Nasdaq governing documents become rules of the Exchanges as of the closing date of the Transaction.

The Nasdaq governing documents include certain provisions that are designed to maintain the independence of each of its self-regulatory

¹¹ See *infra* Section III.C (Removal of Trust Agreement).

¹² See *infra* Section III.D (Member Ownership Restriction).

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

¹⁴ 15 U.S.C. 78s(b)(1).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See ISE Notice, *supra* note 3 at 30351–52; ISE Gemini Notice, *supra* note 3, at 30387; and ISE Mercury Notice, *supra* note 3, at 30404.

¹⁷ See ISE Notice, *supra* note 3 at 30352; ISE Gemini Notice, *supra* note 3, at 30387; and ISE Mercury Notice, *supra* note 3, at 30404.

¹⁸ Furthermore, the Commission does not believe that ownership by a single holding company of multiple SROs presents any burden on competition in violation of the Act. The Commission notes that, although the Transaction will result in Nasdaq owning six national securities exchanges that trade options, the Commission’s approval of new option exchange registrations in recent years highlights that there continues to be competition among market centers that trade options. See, e.g., Securities Exchange Act Release Nos. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (order approving application for exchange registration of ISE Mercury, LLC) (“ISE Mercury Exchange Registration”); 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (order approving rules governing the trading of options on the EDGX Options Market); 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (order approving application for exchange registration of Topaz Exchange, LLC (n/k/a ISE Gemini, LLC)) (“ISE Gemini Exchange Registration”); 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (order approving application for exchange registration of Miami International Securities Exchange, LLC); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (order approving rules governing the trading of options on the BATS Options Exchange).

¹⁹ 15 U.S.C. 78s(b).

²⁰ 17 CFR 240.19b–4.

²¹ See Securities Exchange Act Release Nos. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101) (order approving acquisition of ISE Holdings by Eurex Frankfurt) (“Eurex Frankfurt Acquisition Order”). See also ISE Mercury Exchange Registration and ISE Gemini Exchange Registration, *supra* note 18. The Non-U.S. Upstream Owner Resolutions are rules of an exchange if they are stated policies, practices, or interpretations (as defined in Rule 19b–4 under the Act) of an exchange, and must therefore be filed with the Commission pursuant to section 19(b)(4) of the Act and Rule 19b–4 thereunder. See Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27).

²² See Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27).

subsidiaries'²³ self-regulatory functions, enable each of its self-regulatory subsidiaries to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Section 6(b) of the Act,²⁴ and facilitate the ability of each of its self-regulatory subsidiaries and the Commission to fulfill their regulatory and oversight obligations under the Act.²⁵ Upon closing of the Transaction, each of the Exchanges will be a self-regulatory subsidiary of Nasdaq. Accordingly, the provisions regarding the self-regulatory subsidiaries in the Nasdaq governing documents will apply to the Exchanges when the Transaction is finalized.

The Nasdaq governing documents provide the following provisions, which are designed to ensure that each self-regulatory subsidiary can carry out its self-regulatory obligations. The Nasdaq Bylaws specify that Nasdaq and its officers, directors, and employees irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and each self-regulatory subsidiary for the purposes of any suit, action, or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of any self-regulatory subsidiary.²⁶ Nasdaq also agrees to provide the Commission with access to its books and records relating to the activities of each self-regulatory subsidiary.²⁷ Further, Nasdaq (along with its respective board members, officers, and employees) agrees to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the self-regulatory subsidiaries, including, but not limited to, disciplinary matters, trading data, trading practices, and audit information, contained in the books and records of such subsidiaries and not use such information for any non-regulatory purposes.²⁸ Additionally, the board of directors of Nasdaq ("Nasdaq Board"), as well as its officers and employees are

required to give due regard to the preservation of the independence of each self-regulatory subsidiary's self-regulatory function,²⁹ and the Nasdaq Board, when evaluating any issue, is required to take into account the potential impact on the integrity, continuity, and stability of the self-regulatory subsidiaries.³⁰ The Nasdaq Bylaws also require that any changes to the Nasdaq governing documents be submitted to the board of directors of each of its self-regulatory subsidiaries, and, if such amendment is required to be filed with the Commission pursuant to Section 19(b) of the Act, such change shall not be effective until filed with, or filed with and approved by, the Commission.³¹ The requirement to submit changes to the board of directors of each self-regulatory subsidiary continues for so long as Nasdaq, directly or indirectly, controls any such subsidiary.³²

In addition, similar to the ISE Holdings COI,³³ the Nasdaq COI imposes limits on direct and indirect changes in control, which are designed to prevent any shareholder from exercising undue control over the operation of its self-regulatory subsidiaries and to ensure that such subsidiaries and the Commission are able to carry out their regulatory obligations under the Act. Specifically, no person who beneficially owns shares of common stock or preferred stock of Nasdaq in excess of 5% of the then-outstanding securities generally entitled

to vote may vote the shares in excess of 5%.³⁴ This limitation mitigates the potential for any Nasdaq shareholder to exercise undue control over the operations of the Exchanges and facilitates the Exchanges' and the Commission's ability to carry out their regulatory obligations under the Act. The Nasdaq Board, however, may approve exemptions from the 5% voting limitation for any person that is not a registered broker or dealer, an affiliate of a registered broker or dealer, or a person subject to a statutory disqualification under Section 3(a)(39) of the Act,³⁵ provided that the Nasdaq Board also determines that granting such exemption would be consistent with the self-regulatory obligations of its self-regulatory subsidiaries.³⁶ Further, any such exemption from the 5% voting limitation would not be effective until such resolution has been filed with and approved by the Commission pursuant to Section 19 of the Act.³⁷

For the foregoing reasons, the Commission believes that the Nasdaq governing documents are reasonably designed to facilitate the Exchanges' ability to fulfill their self-regulatory obligations and are, therefore, consistent with the Act. Additionally, as discussed further below, the Commission also believes that the provisions in the Nasdaq governing documents should minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the Exchanges to effectively carry out their regulatory oversight responsibilities under the Act. In this regard, the Commission finds that the proposals are consistent with Section 6(b)(1) of the Act³⁸ in particular, which requires, among other things, that an exchange be organized and have the

²⁹ See Nasdaq Bylaws Section 12.1(a).

³⁰ See Nasdaq Bylaws Section 12.7 (Self-Regulatory Subsidiaries).

Nasdaq must also comply with federal securities laws and the rules and regulations thereunder. Further, it agrees to cooperate with the Commission and each of the self-regulatory subsidiaries pursuant to, and to the extent of, their respective regulatory authority. Moreover, Nasdaq's officers, directors, and employees are deemed to agree to cooperate with the Commission and each self-regulatory subsidiary in respect of the Commission's oversight responsibilities regarding Nasdaq's SROs and the self-regulatory functions and responsibilities of such SROs. See Nasdaq Bylaws Section 12.2. Further, Nasdaq will take reasonable steps necessary to cause its officers, directors, and employees to consent in writing to the applicability of provisions regarding books and records, confidentiality, jurisdiction, cooperation, and regulatory obligations, with respect to their activities related to any self-regulatory subsidiary (see Nasdaq Bylaws Section 12.4), and will take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the self-regulatory subsidiaries, pursuant to their regulatory authority (see Nasdaq Bylaws Section 12.2(a)).

³¹ See Nasdaq Bylaws Sections 11.3 (Review by Self-Regulatory Subsidiaries) and 12.6 (Amendment to the Certificate of Incorporation).

³² See Nasdaq Bylaws Section 12.6 (Amendment to the Certificate of Incorporation).

³³ See ISE Holdings COI, Article FOURTH, Section III.

³⁴ See Nasdaq COI, Article FOURTH, Section C.2.

³⁵ 15 U.S.C. 78c(a)(39).

³⁶ See Nasdaq COI, Article FOURTH, Section C.6. Specifically, the Nasdaq Board must determine that granting such exemption would (1) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or its self-regulatory subsidiaries or the other operations of Nasdaq and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (3) among other things, promote the prompt and accurate clearance and settlement of securities transactions. See *id.*

³⁷ See Nasdaq COI, Article FOURTH, Section C.6 and Nasdaq Bylaws Section 12.5 (Board Action with Respect to Voting Limitations of the Certificate of Incorporation).

³⁸ 15 U.S.C. 78s(b)(1).

²³ Article I(f) of the Nasdaq Bylaws defines "self-regulatory subsidiary" to mean any subsidiary of Nasdaq that is a self-regulatory organization as defined under Section 3(a)(26) of the Act.

²⁴ 15 U.S.C. 78f(b).

²⁵ See, e.g., Nasdaq Bylaws Article XII.

²⁶ See Nasdaq Bylaws Section 12.3 (Consent to Jurisdiction).

²⁷ See Nasdaq Bylaws Section 12.1(b). To the extent that they relate to the activities of the ISE, ISE Gemini, or ISE Mercury, all books, records, premises, officers, directors, and employees of Nasdaq would be deemed to be those of ISE, ISE Gemini, or ISE Mercury, as applicable. See Nasdaq Bylaws Section 12.1(c).

²⁸ See Nasdaq Bylaws Section 12.1(b).

capacity to be able to carry out the purposes of the Act and to comply, and 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.

The Commission also notes that, even in the absence of the governance provisions described above, under Section 20(a) of the Act, any person with a controlling interest in one of the Exchanges would be jointly and severally liable with and to the same extent that the respective Exchange is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.³⁹ In addition, Section 20(e) of the Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder.⁴⁰ Further, Section 21C of the Act authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.⁴¹ These provisions are applicable to all entities’ dealings with the Exchanges, including Nasdaq.

B. Ownership Limits and Voting Limits

The Exchanges propose to amend the U.S. Exchange Holdings COI to recognize that, following the closing of the Transaction, Nasdaq will own all of the capital stock (whether common stock or preferred stock) of U.S. Exchange Holdings. The Exchanges also propose to amend the ISE Holdings COI to replace its current ownership limitations and voting limitations with a new restriction that will reinforce ISE Holdings’ current ownership by U.S. Exchanges Holdings and will require U.S. Exchange Holdings to own all of the capital stock of ISE Holdings.

Currently, pursuant to the limited liability company agreements of ISE, ISE Gemini, and ISE Mercury, ISE Holdings is the sole member of each of the Exchanges.⁴² Although ISE Holdings

may assign its interest in any of the Exchanges, such assignment is subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act.⁴³

In turn, the current ISE Holdings COI contains certain ownership limits (“Ownership Limits”) and voting limits (“Voting Limits”) with respect to the outstanding capital stock of ISE Holdings.⁴⁴ These provisions are designed to prevent any shareholder (or shareholders acting together) from exercising undue control over the operation of the Exchanges and to help ensure that the Exchanges and the Commission are able to carry out their regulatory responsibilities.⁴⁵ Specifically, the ISE Holdings COI Ownership Limits prohibit any person, either alone or together with its Related Persons,⁴⁶ from directly or indirectly owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings that have the right by their terms to vote in the election of members of the board of directors or on other matters which may require the approval of the holders of voting shares of ISE Holdings (other than matters affecting the rights, preferences or privileges of a particular class of capital stock) (“Voting Shares”) (or in the case of any Exchange member, acting alone or together with its Related Persons, from directly or indirectly owning of record or beneficially more than 20% of the then-outstanding Voting Shares).⁴⁷ Further, the ISE Holdings COI’s Voting Limits prohibit any person, either alone or together with its Related Persons, from voting or causing the voting of Voting Shares representing more than 20% of the voting power of the then-outstanding Voting Shares.⁴⁸ If a person

the Limited Liability Company Agreement of ISE Mercury (“ISE Mercury LLC Agreement”).

⁴³ See Section 7.1 of the ISE LLC Agreement, the ISE Gemini LLC Agreement, and the ISE Mercury LLC Agreement.

⁴⁴ See ISE Holdings COI, Article FOURTH, Section III.

⁴⁵ See, e.g., Securities Exchange Release No. 51029 (April 23, 2008), 70 FR 3233, 3239–40 (January 12, 2005) (SR-ISE-2004-29).

⁴⁶ As used in the ISE Holdings COI, the term “Related Persons” means (1) with respect to any Person, any executive officer (as such term is defined in Rule 3b-7 under the Act), director, general partner, manager or managing member, as applicable, and all “affiliates” and “associates” of such Person (as such terms are defined in Rule 12b-2 under the Act). The term “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 Holdings COI, Article FOURTH, Section III.

⁴⁷ See ISE Holdings COI, Article FOURTH, Section III.(a)(i).

⁴⁸ See ISE Holdings COI, Article FOURTH, Section III.(b). The Voting Limits also prohibit

exceeds the Ownership Limits or Voting Limits, a majority of Voting Shares then-outstanding automatically is transferred *pro rata* from the holders thereof to a Delaware statutory trust (“ISE Trust”) (as described below), which is operated pursuant to the Trust Agreement.⁴⁹ However, the ISE Holdings COI allows the board of directors of ISE Holdings (“ISE Holdings Board”) to waive the Ownership Limits or Voting Limits for persons other than Exchange members pursuant to an amendment to the ISE Holdings Bylaws, provided that the ISE Holdings Board makes certain determinations.⁵⁰ Such amendment, however, needs to be filed with and approved by the Commission under Section 19(b) of the Act.⁵¹

Persons, either alone or together with its Related Persons, from giving any consent or proxy with respect to Voting Shares representing more than 20% of the voting power of the then-outstanding Voting Shares; or from entering into certain agreements, plans or other arrangements with respect to Voting Shares. *Id.*

⁴⁹ See ISE Holdings COI, Article FOURTH, Section III.(c). See also *supra* note 11 and accompanying text (describing the Trust Agreement).

⁵⁰ See ISE Holdings COI, Article FOURTH, Sections III.(a)(i)(A), III.(a)(i)(B) and III.(b)(i). Specifically, the ISE Holdings Board must make a determination that waiver of the current Ownership Limits or Voting Limits (1) would not impair the ability of ISE Holdings or its self-regulatory subsidiaries (including the Exchanges), or a facility thereof, to carry out its functions and responsibilities under the Act and the rules thereunder; (2) is otherwise in the best interests of ISE Holdings, its stockholders, and its self-regulatory subsidiaries (including the Exchanges), or a facility thereof; and (3) would not impair the ability of the Commission to enforce the Act. See ISE Holdings COI, Article FOURTH, Sections III.(a)(i)(A) and III.(b)(i). However, the ISE Holdings Board may not waive the current Voting Limits as they apply to Exchange members. See ISE Holdings COI, Article FOURTH, Section III.(b)(i). Furthermore, the ISE Holdings Board may not waive the current Ownership Limits or Voting Limits if such waiver would result in a person subject to “statutory disqualification” (within the meaning of Section 3(a)(39) of the Act) owning or voting shares above the Ownership Limits or Voting Limits. See ISE Holdings COI, Article FOURTH, Sections III.(a)(i)(B).

⁵¹ See ISE Holdings COI, Article FOURTH, Sections III.(a)(i)(A) and III.(b)(i). In connection with the acquisition of U.S. Exchange Holdings by Nasdaq, the Exchanges propose to amend the ISE Holdings Bylaws to waive the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding capital stock of ISE Holdings following the closing of the Transaction. See proposed ISE Holdings Bylaws Section 11.3 (Waiver of Ownership Limits and Voting Limits to Permit Transaction). Each of the Exchanges represents that the ISE Holdings Board has made the necessary determinations pursuant to the ISE Holdings COI and approved the waiver of the current Ownership Limits and Voting Limits as applied to Nasdaq. See ISE Notice, *supra* note 3 at 30356–7; ISE Gemini Notice, *supra* note 3, at 30392; and ISE Mercury Notice, *supra* note 3, at 30409. For the reasons discussed herein, the Commission finds the waiver of the current Ownership Limits and Voting Limits for Nasdaq to effect the Transaction consistent with the Act.

³⁹ 15 U.S.C. 78t(a).

⁴⁰ 15 U.S.C. 78t(e).

⁴¹ 15 U.S.C. 78u–3.

⁴² See Section 2.1 of the Third Amended and Restated Limited Liability Company Agreement of ISE (“ISE LLC Agreement”), the Second Amended and Restated Limited Liability Company Agreement of ISE Gemini (“ISE Gemini LLC Agreement”), and

To facilitate compliance with the Ownership Limits and Voting Limits, the U.S. Exchange Holdings COI also provides that U.S. Exchange Holdings shall take reasonable steps necessary to cause ISE Holdings to be in compliance with the Ownership Limits and Voting Limits.⁵² Further, the U.S. Exchange Holdings COI requires U.S. Exchange Holdings to notify the Exchanges' board of directors and the ISE Trust if any person, either alone or together with its related persons, acquires 10%, 15%, 20%, 25%, 30%, 35%, or 40% or more of the then-outstanding shares of stock of U.S. Exchange Holdings ("U.S. Exchange Holdings Acquisition Notice Requirement").⁵³

As proposed, Nasdaq would acquire all of the capital stock of U.S. Exchange Holdings. In turn, U.S. Exchange Holdings would be required to continue to hold 100% of the capital stock of ISE Holdings. To reflect this revised ownership structure, the Exchanges propose to amend Article THIRTEENTH of the U.S. Exchange Holdings COI to provide that, for so long as U.S. Exchange Holdings controls, directly or indirectly, one or more national securities exchanges, including, but not limited to, the Exchanges (each, a "Controlled National Securities Exchange") or a facility thereof, all authorized shares of stock of U.S. Exchange Holdings that are issued and outstanding will be held by Nasdaq.⁵⁴ Further, Nasdaq may not transfer or assign any shares of stock of U.S. Exchange Holdings, in whole or in part, to any Person,⁵⁵ unless such transfer or assignment is filed with, or filed with and approved by, the Commission, under Section 19 of the Act and the rules promulgated thereunder.⁵⁶

The Exchanges also propose that, for so long as U.S. Exchange Holdings controls, directly or indirectly, one or more Controlled National Securities Exchange or a facility thereof, Nasdaq will be entitled to vote or cause the voting of all authorized shares of stock of U.S. Exchange Holdings that are

issued and outstanding.⁵⁷ Nasdaq also may not transfer or assign any voting rights with respect to the stock of U.S. Exchange Holdings, in whole or in part, to any Person, unless such transfer or assignment is filed with, or filed with and approved by, the Commission, under Section 19(b) of the Act and the rules promulgated thereunder.⁵⁸

The Exchanges also propose to delete certain provisions in the U.S. Exchange Holdings COI that are no longer applicable as a result of the above changes. Specifically, the Exchanges propose to delete the U.S. Exchange Holdings Acquisition Notice Requirement because it would no longer be relevant, given that any change in ownership of U.S. Exchange Holdings would be subject to a Commission rule filing and approval pursuant to Section 19 of the Act and the rules thereunder.⁵⁹

Additionally, the Exchanges propose to eliminate the current Ownership Limits and Voting Limits in Section III(a) and (b) of Article FOURTH of the ISE Holdings COI. In place of these restrictions, the Exchanges propose to adopt new restrictions on the transfer or assignment of any shares of capital stock of ISE Holdings. Specifically, the Exchanges propose to amend Article FOURTH, Section III(a)(i) to provide that, for so long as ISE Holdings shall control, directly or indirectly, one or more Controlled National Securities Exchange, or a facility thereof, all authorized shares of capital stock of ISE Holdings that are issued and outstanding shall be held by U.S. Exchange Holdings. Additionally, U.S. Exchange Holdings may not transfer or assign any shares of capital stock of ISE Holdings, in whole or in part, to any Person,⁶⁰ unless such transfer or assignment is filed with, or filed with and approved by, the Commission, under Section 19 of the Act and the rules promulgated thereunder.⁶¹

Furthermore, for so long as ISE Holdings shall control, directly or indirectly, one or more Controlled National Securities Exchanges or a facility thereof, U.S. Exchange Holdings shall be entitled to vote or cause the

voting of all authorized shares of capital stock of ISE Holdings that are issued and outstanding.⁶² U.S. Exchange Holdings may not transfer or assign any voting rights with respect to the shares of capital stock of ISE Holdings, in whole or in part, to any Person, unless such transfer or assignment is filed with, or filed with and approved by, the Commission, under Section 19(b) of the Act and the rules promulgated thereunder.⁶³ The Exchanges also propose to delete the rule text provisions in the ISE Holdings COI that are no longer applicable as a result of the proposed amendments to the Ownership Limits and Voting Limits.⁶⁴

The Commission previously approved the existing Ownership Limits and Voting Limits to enable the Exchanges to carry out their self-regulatory responsibilities, and to enable the Commission to fulfill its responsibilities under the Act.⁶⁵ After the closing of the Transaction, these goals would be achieved by the proposed new restrictions on the transfer or assignment of U.S. Exchange Holdings and ISE Holdings capital stock. Moreover, as discussed above, the Nasdaq COI currently includes restrictions on any person voting shares in excess of 5%.⁶⁶ Further, the Nasdaq Bylaws requires the Nasdaq Board, prior to approving an exemption from the 5% voting limitation, to determine that

⁵² See proposed ISE Holdings COI, Article FOURTH, Section III(b)(i).

⁵³ See proposed ISE Holdings COI, Article FOURTH, Section III(b)(i).

⁵⁴ The Exchanges propose to delete the descriptions of the Ownership Limits and Voting Limits in Section III(a)(i)(x) and (y), and Section III(b)(i) of Article FOURTH of the ISE Holdings COI. The Exchange also proposes the following, related deletions from Article FOURTH of the ISE Holdings COI: (i) Section III(a)(ii) and (iii), which will cease to be relevant given the proposed replacement of the Ownership Limits; (ii) the references to "Ownership Percentage" from current Section III(a)(i)(B), (D) and (E), given the proposed requirement that all issued and outstanding shares of capital stock of ISE Holdings be held by U.S. Exchange Holdings; (iii) the references to "Voting Control Percentage" from Section III(b)(i) and (iii), which will cease to be relevant given the proposed requirement that U.S. Exchange Holdings shall be entitled to vote or cause the voting of all authorized shares of capital stock of ISE Holdings that are issued and outstanding; and (iv) Section III(c), which will cease to be relevant given that the concept of "Excess Shares" will no longer exist. The Exchanges also propose to renumber current Section III(d) of Article FOURTH of the ISE Holdings COI as Section III(c) of Article FOURTH. Finally, the Exchanges proposes to relocate the current definition of "Voting Shares," from current Section III(a)(i) of Article FOURTH to the introductory paragraph of Section III of Article FOURTH.

⁵⁵ See Securities Exchange Act Release No. 53705 (April 21, 2006), 71 FR 25260, 25263 (April 28, 2006) (SR-ISE-2006-04) (reorganization of ISE into a holding company structure).

⁵⁶ See Nasdaq COI, Article FOURTH, Section C.2.

⁵² See U.S. Exchange Holdings COI, Article THIRTEENTH.

⁵³ See *id.*

⁵⁴ See proposed U.S. Exchange Holdings COI, Article THIRTEENTH(ii). The Exchanges propose to renumber the existing text of Article THIRTEENTH as Article THIRTEENTH(i).

⁵⁵ As used in the U.S. Exchange Holdings COI, the term "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 U.S. Exchange Holdings COI, Article EIGHTH.

⁵⁶ See proposed U.S. Exchange Holdings COI, Article THIRTEENTH(ii).

⁵⁷ See proposed U.S. Exchange Holdings COI, Article THIRTEENTH(iii).

⁵⁸ See *id.*

⁵⁹ The Commission notes that other provisions in U.S. Exchange Holdings COI that are designed to maintain the independence of the self-regulatory function of the Exchanges would not be amended. See, e.g., proposed U.S. Exchange Holdings COI, Articles TENTH, ELEVENTH, TWELFTH, FOURTEENTH, and FIFTEENTH; ISE Mercury Exchange Registration, *supra* note 18, at 6071-6072 (discussing these provisions).

⁶⁰ See *supra* note 46.

⁶¹ See proposed ISE Holdings COI, Article FOURTH, Section III(a)(i).

granting such exemption would be consistent with the Exchanges' self-regulatory obligations.⁶⁷

Accordingly, the Commission finds that the elimination of the Ownership Limits and Voting Limits and the adoption of new controls on the ownership, transfer, assignment, and voting of the capital stock of U.S. Exchange Holdings and ISE Holdings, together with the voting limitations in Nasdaq's governing documents, are reasonably designed to prevent any shareholder from exercising undue control over the operation of the Exchanges. The Commission also believes that the proposed rule changes are reasonably designed to ensure that the Exchanges and the Commission are able to carry out their regulatory obligations under the Act and thereby should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their respective regulatory oversight responsibilities under the Act.⁶⁸

C. Removal of Trust Agreement

As described above, Section 19(b) of the Act and Rule 19b-4 thereunder require an SRO to file proposed rule changes with the Commission. Although the ISE Trust is not an SRO, because the provisions of the Trust Agreement, pursuant to which the ISE Trust operates, are stated policies, practice, or interpretations of the Exchanges, they are rules of the Exchanges, as defined in Rule 19b-4 under the Act.⁶⁹

Accordingly, the Exchanges previously filed the Trust Agreement with the Commission pursuant to Section 19(b)(4) of the Act⁷⁰ and Rule 19b-4 thereunder.⁷¹

The Trust Agreement was entered into in 2007 to provide for an automatic

transfer of ISE Holdings shares to the ISE Trust if a Person⁷² were to obtain, through ownership of one of the non-U.S. upstream owners without prior Commission approval, an ownership or voting interest in ISE Holdings in excess of the Ownership Limits and Voting Limits.⁷³ The ISE Trust, and the Trust Agreement that governs the Trust, has since served as the mechanism by which the Ownership Limits and Voting Limits would be enforced in the event of a violation of those limitations.⁷⁴

The purpose for which the ISE Trust was formed will no longer be relevant after the closing of the Transaction. As described above, the Exchanges propose to remove the Ownership Limits and Voting Limits in the ISE Holdings COI and instead propose a new requirement that Nasdaq be the holder of 100% of the capital stock of U.S. Exchange Holdings, which in turn, must hold 100% of the capital stock of ISE Holdings, unless approved by the Commission.⁷⁵ Accordingly, as of closing date of the Transaction, the Exchanges propose to delete the Trust Agreement as rules of the Exchanges.⁷⁶ In connection with the repeal of the Trust Agreement, the Exchanges also propose to remove provisions relating to the Trust Agreement and the ISE Trust from the ISE Holdings COI.⁷⁷ Similarly, the Exchanges also propose to remove references to the Trust Agreement in Article THIRTEENTH of the U.S. Exchange Holdings COI.⁷⁸ The Commission believes that these

proposed changes are consistent with the Act because they provide greater clarity and remove uncertainty regarding the application of the Trust Agreement to ISE Holdings and U.S. Exchange Holdings.

The Commission believes that repealing the Trust Agreement and removing related provisions from the ISE Holdings and U.S. Exchange Holdings COIs is appropriate given the adoption of new controls on the ownership, transfer, assignment, and voting of U.S. Exchange Holdings and ISE Holdings capital stock, together with the voting limitations in the Nasdaq governing documents, discussed above.

D. Member Ownership Restriction

Each of the Exchanges also proposes to amend its rules to prohibit its members or persons associated with such members from beneficially owning, directly or indirectly, greater than 20% of the (i) then-outstanding voting Limited Liability Company Interest of ISE, ISE Gemini, or ISE Mercury, as applicable, or (ii) then-outstanding voting securities of Nasdaq (the "Member Ownership Restrictions").⁷⁹ The proposed 20% limitation on ownership of each of the Exchanges by its members replaces a similar provision being deleted in current Section III(a)(i)(y) of Article FOURTH of the ISE Holdings COI.

As the Commission has noted in the past, a member's interest in an exchange could rise to a level as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.⁸⁰ A member that is a controlling shareholder of an exchange or an exchange's holding company might be tempted to exercise that controlling influence by pressuring or directing the exchange to refrain from,

⁶⁷ See Nasdaq Bylaws Section 12.5 (Board Action with Respect to Voting Limitations of the Certificate of Incorporation).

⁶⁸ The Commission notes that it made similar findings in connection with its approval of the substantially similar ownership structures, and related protections, of the NASDAQ Exchange, Phlx, and BX. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550, 3552 (January 23, 2006) (order approving application for exchange registration of the NASDAQ Exchange); Phlx Acquisition Order, *supra* note 45, at 42877; and Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936, 46943 (August 12, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (order approving the acquisition of the Boston Stock Exchange, Inc. by The NASDAQ OMX Group, Inc.) ("BX Acquisition Order").

⁶⁹ 17 CFR 240.19b-4.

⁷⁰ 15 U.S.C. 78s(b).

⁷¹ See Eurex Frankfurt Acquisition Notice, *supra* note 21. See also ISE Notice, *supra* note 3 at 30354; ISE Gemini Notice, *supra* note 3, at 30389; and ISE Mercury Notice, *supra* note 3, at 30406. See also *supra* note 21.

⁷² Under the Trust Agreement, the term "Person" means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, government or any agency or political subdivision thereof, or any other entity of any kind or nature. See Trust Agreement, Section 1.1.

⁷³ See ISE Notice, *supra* note 3 at 30354; ISE Gemini Notice, *supra* note 3, at 30389; and ISE Mercury Notice, *supra* note 3, at 30406.

⁷⁴ For a more detailed description of the operation of the Trust Agreement, see ISE Notice, *supra* note 3 at 30354; ISE Gemini Notice, *supra* note 3, at 30389; and ISE Mercury Notice, *supra* note 3, at 30406. See also *supra* note 21. See also Eurex Frankfurt Acquisition Order, *supra* note 21, at 71984.

⁷⁵ See Amendment No. 1, *supra* note 4.

⁷⁶ The Exchange also proposes that, as of the closing of the Transaction, the parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust.

⁷⁷ The Exchanges also propose to retitle the U.S. Exchange Holdings COI as the "Third" Amended and Restated Certificate of Incorporation of ISE Holdings.

⁷⁸ The Exchanges also propose to (i) retitle the U.S. Exchange Holdings COI as the "Fourth" Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings, (ii) update the effective date thereof, and (iii) update references to the U.S. Exchange Holdings COI as the "Restated Certificate," which is a defined term therein.

⁷⁹ See proposed ISE Rule 312, proposed ISE Gemini Rule 309, and proposed ISE Mercury Rule 309. For purposes of the amended rules, each of the Exchanges also proposes to include language stating that any calculation of the voting Limited Liability Company Interest of each of the Exchanges or the voting securities of Nasdaq outstanding at any particular time shall be made in accordance with the last sentence of Commission Rule 13d-3(d)(1)(i)(D) and the term "beneficially owned," including all derivative or similar words, shall have the meaning set forth in the Nasdaq COI. Each of the Exchanges also proposes to delete obsolete language in the amended rule that provides that nothing in the rule shall prohibit a member (and, in the case of proposed ISE Rule 312, or non-member owner) from acquiring or holding any equity interest in ISE Holdings that is permitted by the ISE Holdings COI given the modifications to the ownership structure of ISE Holdings discussed in Section III.B (Ownership Limits and Voting Limits).

⁸⁰ See, e.g., BX Acquisition Order, *supra* note 68, at 46942.

or the exchange otherwise may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions.⁸¹ The Commission finds that the proposed Member Ownership Restrictions, combined with the voting limitations in Nasdaq's governing documents as discussed above, are consistent with the Act, including Sections 6(b)(1) and 6(b)(5) of the Act. The Commission believes that the proposed Member Ownership Restrictions are reasonably designed to reduce the potential for an Exchanges' member to improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their respective regulatory oversight responsibilities under the Act.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning: Amendment No. 1 to File Nos. SR-ISE-2016-11, SR-ISE Gemini-2016-05, and SR-ISE Mercury-2016-10, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ISE-2016-11, SR-ISE Gemini-2016-05, or SR-ISE Mercury-2016-10, as applicable, 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 Numbers SR-ISE-2016-11, SR-ISE Gemini-2016-05, SR-ISE Mercury-2016-10, as applicable. This file number should be included on the subject line if email 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 available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE, ISE Gemini, or ISE Mercury, as applicable. 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 Numbers SR-ISE-2016-11, SR-ISE Gemini-2016-05, or SR-ISE Mercury-2016-10, as applicable, and should be submitted on or before July 18, 2016.

V. Accelerated Approval of Proposed Rule Changes, as Modified by Their Respective Amendment No. 1

The Commission, pursuant to Section 19(b)(2) of the Act,⁸² finds good cause for approving the proposed rule changes, as modified by their respective Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchanges propose to amend the ISE Holdings COI and U.S. Exchange Holdings COI to remove the Ownership Limits and Voting Limits and adopt new controls on the ownership, transfer, assignment, and voting of the capital stock of U.S. Exchange Holdings and ISE Holdings.⁸³ Amendment No. 1 also made certain conforming changes to the ISE Holdings COI and U.S. Exchange Holdings COI in connection with the removal of the Ownership Limits and Voting Limits.⁸⁴ In addition, each of the Exchanges proposes to amend one of their existing rules limiting the affiliation between ISE, ISE Gemini, or ISE Mercury and their respective members by adopting the Member Ownership Restrictions.⁸⁵ As discussed more fully above, the Commission believes that the amended Ownership Limits and Voting Limits, along with the ancillary modifications related thereto,

are reasonably designed to prevent any shareholder from exercising undue control over the operation of each of the Exchanges. Furthermore, as stated above, the Commission believes that the proposed Membership Ownership Restrictions are reasonably designed to reduce the potential for an Exchanges' member to improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their respective regulatory oversight responsibilities under the Act. Accordingly, the Commission finds good cause for approving the proposed rule changes, as modified by their respective Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁸⁶ that the proposed rule changes (SR-ISE-2016-11; SR-ISE Gemini-2016-05; SR-ISE Mercury-2016-10), as modified by their respective Amendment No. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁷

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78112; File No. SR-BatsEDGX-2016-23]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

June 21, 2016.

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 June 8, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii)

⁸² 15 U.S.C. 78s(b)(2).

⁸³ See *supra* Section III.B (Ownership Limits and Voting Limits).

⁸⁴ See *supra* notes 54 and 64.

⁸⁵ See *supra* Section III.D (Member Ownership Restriction).

⁸⁶ 15 U.S.C. 78f(b)(2).

⁸⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁸¹ See *id.*