

**ARRANGEMENT FOR CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION  
RELATING TO THE OVERSIGHT OF AFFILIATED MARKETS  
MADE UNDER THE SUPERVISORY MOU BETWEEN THE US SEC AND THE GERMAN BAFIN**

**Background**

On April 26, 2007, the United States Securities and Exchange Commission (“SEC”) and the German Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”) concluded a Memorandum of Understanding (“MOU”) concerning consultation, cooperation and the exchange of information regarding the oversight of markets and the supervision of financial services firms. Pursuant to Article Five of the MOU, the SEC and the BaFin agreed to endeavor to enter into written practical arrangements governing the scope and the terms and conditions for consultation, cooperation and the exchange of information relating to the oversight of markets in the United States and Germany that may become affiliated through a common ownership structure. On April 30, 2007, Eurex Frankfurt AG (“EFAG”) and International Securities Exchange Holdings, Inc. (“ISE”) announced that they signed a definitive agreement under which EFAG will acquire ISE, subject to regulatory approvals. The combination will be implemented by way of a merger between ISE and Ivan Acquisition Co., which is a wholly owned subsidiary of U.S. Exchange Holdings, Inc., which is a wholly owned subsidiary of EFAG. In view of this pending merger, the SEC and BaFin, together with the Exchange Supervisory Authority for the German federal state of Hessen, enter into the following arrangement (“Arrangement”) for consultation, cooperation and exchange of information relating to the oversight of the US Market and German Market that become affiliated through a common ownership structure as the result of such merger.

**Definitions**

1. As supplemented or amended below, the definitions in Article One of the MOU apply to this Arrangement.
2. For purposes of this Arrangement, “Authority” means the SEC, the BaFin or the Exchange Supervisory Authority in the German federal state of Hessen (collectively, the “Authorities”).
3. The Hessisches Ministerium für Wirtschaft, Verkehr und Landesentwicklung – Börsenaufsichtsbehörde, or the Exchange Supervisory Authority (“ESA”), is responsible for the supervision of the exchanges domiciled in the State of Hessen. The derivatives exchange Eurex Deutschland (“Eurex”), which is operated by EFAG, is located in the state of Hessen. Regulatory cooperation between the BaFin and ESA is governed by section 6 paragraph 2 of the German Securities Trading Act.
4. The “US Market” covered by this Arrangement is the International Securities Exchange, LLC (“ISE Market”), which is a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 and a wholly owned subsidiary of ISE.

5. The “German Market” covered by this Arrangement is Eurex, which is operated by EFAG. The latter is a wholly owned subsidiary of Eurex Zürich AG (“Eurex Zürich”). Eurex Zürich is jointly owned and operated by Deutsche Börse AG and SWX Swiss Exchange.
6. For purposes of this Arrangement, “Books and Records” means documents, books and records of, and other information relating to a Market.
7. For purposes of this Arrangement, “Governing Documents” means, with respect to any entity, the certificate of incorporation, the articles of incorporation, bylaws, articles of organization, limited liability company agreement, partnership agreement, formation agreement, joint venture agreement or other similar organizational documents of such entity (in each case, as amended), and any binding resolutions of such entity.

### **General Provisions**

8. As supplemented below, the general provisions in Article Two of the MOU apply to this Arrangement.
9. The Authorities confirm that consultation, cooperation and the exchange of information relating to the oversight of Markets as contemplated in this Arrangement shall apply to the Affiliated Markets and to any direct or indirect operating or parent company of the Affiliated Markets, subject to oversight by one or more Authority, (“Parent Company”) to the extent that they relate to the activities of the Affiliated Markets.
10. The Authorities confirm that joint ownership or affiliation of Markets alone will not lead to mandatory registration of, or application of domestic laws to, a Market in another Authority's jurisdiction or companies listed on that Market.
11. The Authorities affirm their shared belief in the importance of local regulation of local Markets. Accordingly, this Arrangement supports the ability of the SEC, BaFin and ESA to promulgate new, or maintain existing, regulatory requirements necessary for the regulation and oversight of Markets that operate, and issuers that raise capital, in their respective jurisdictions, in accordance with their respective laws and requirements.
12. To facilitate cooperation under this Arrangement, the Authorities amend Appendix A of the MOU to designate a contact person for the ESA, in addition to the contact persons already listed for the SEC and BaFin.

## Scope of Supervisory Consultation, Cooperation and the Exchange of Information Relating to Affiliated Markets

13. **Periodic Meetings.** The Chairmen of the SEC, BaFin and ESA intend to meet periodically to identify and discuss issues of regulatory concern to one or more Authorities, and to identify and discuss at early stages the regulatory implications of anticipated further levels of integration of the Markets.
14. **At the General Level.** To the extent practicable and as appropriate in the particular circumstances, each Authority endeavors to inform the other Authority in advance of:
  - a. regulatory changes or other material events that may have a significant impact on the operations or activities of Eurex or ISE Market; and
  - b. enforcement actions or sanctions that could adversely impact Eurex or ISE Market.

Ordinarily, regulatory changes involving a Market in just one Authority's jurisdiction, or enforcement actions or sanctions involving solely that Market, would not be viewed as triggering this provision.

15. **At the Parent Company Level.**
  - a. The Authorities intend to consult regularly regarding general supervisory and regulatory developments, and to work together to coordinate their regulatory approval processes with respect to decisions taken by any Parent Company that affect operations or activities across the ISE Market and Eurex. Issues for coordination, which each Authority will endeavor to bring to the Authorities' attention, include, but are not limited to:
    - i. Amendments to the Governing Documents of any Parent Company that would affect the operation or activities of the ISE Market and Eurex, where regulatory approvals by the SEC and by the BaFin or ESA are required;
    - ii. Alliances, mergers, or cross-shareholdings that occur at the level of any Parent Company, where regulatory approvals by the SEC and by the BaFin or ESA are required;
    - iii. Amendments to ownership or governance structure of any Parent Company, where regulatory approvals by the SEC and by the BaFin or ESA are required; and
    - iv. Other material changes to any Parent Company relevant to the operation or activities of the ISE Market and Eurex.
  - b. The BaFin or ESA will notify the SEC, as soon as practicable, if either BaFin or ESA becomes aware that persons or entities acquire voting or ownership interests in any Parent Company that trigger regulatory approval by or notification to BaFin or ESA.

- c. To the extent necessary to supplement periodic and ad hoc oral consultations, upon written request, each Authority intends to provide to the other Authority the fullest possible cooperation regarding obtaining information relating to compliance by any Parent Company with its obligations relevant to the Affiliated Markets set forth in its Governing Documents or under the laws or regulations of the Requesting Authority. It is anticipated that such requests will relate to information that is not otherwise available to the Requesting Authority.

16. **At the Market Supervision Level: Coordinated Decision Making.** Where the ISE Market and Eurex seek to harmonize their rules, the Authorities intend to work together to coordinate their regulatory approval processes and to facilitate the development and implementation of consistent rules, where appropriate. Areas for coordination include, but are not limited to:

- a. Efforts to harmonize trading rules across the ISE Market and Eurex; and
- b. Future integration or restructuring steps across the ISE Market and Eurex that may be considered and implemented by any Parent Company.

17. **At the Market Supervision Level: Integrated Functions.** To the extent that any Parent Company and/or the ISE Market and Eurex seek to integrate functions across the Markets, the Authorities agree to consult in the interest of developing practical arrangements to coordinate regulatory oversight of integrated functions. Areas for which practical arrangements may be developed include, but are not limited to, information technology functions, clearance and settlement functions, and the areas identified in paragraph 16(b) above.

#### **Execution of Requests for Assistance**

18. As supplemented below, Article Six of the MOU regarding execution of requests for assistance applies to this Arrangement.
19. For Germany, the Authority to whom a request is made under this Arrangement, or the Authority making a request under this Arrangement, is the BaFin.

#### **Permissible Uses and Confidentiality of Information**

20. As supplemented below, Article Seven of the MOU regarding permissible uses and confidentiality of information applies to this Arrangement.
21. Pursuant to section 7 of the German Exchange Act, any non-public information obtained by the BaFin under this Arrangement and passed on to the ESA, or any non-public information obtained directly by the ESA under this Arrangement, will be kept confidential, can be used only for supervisory purposes consistent with the MOU, and cannot be shared by the ESA with other parties without obtaining the prior consent of the SEC.

## Termination

22. Article Eight of the MOU regarding termination applies to this Arrangement.

## Effective Date

23. This Arrangement will become effective upon publication by ISE that the merger of ISE and Ivan Acquisition Co. has become effective. Once signed and effective, this Arrangement will become part of the MOU.



Date: December 7, 2007  
Christopher Cox, Chairman  
For the United States  
Securities and Exchange Commission



Date: December 12, 2007  
Jochen Sanio, President  
For the German Bundesanstalt für  
Finanzdienstleistungsaufsicht



Date: December 13, 2007  
Dr. Eugen Paravicini, Director General  
For the Hessisches Ministerium für  
Wirtschaft, Verkehr und  
Landesentwicklung