

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61498; File No. SR-ISE-2009-90)

February 4, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to Changes to the U.S. Exchange Holdings, Inc. Corporate Documents and International Securities Exchange Trust Agreement

On November 9, 2009, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the U.S. Exchange Holdings, Inc. (“U.S. Exchange Holdings”) Corporate Documents (as defined below) and the ISE Trust Agreement (as defined below). The proposed rule change was published for comment in the Federal Register on November 24, 2009.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

I. Background

U.S. Exchange Holdings wholly owns ISE Holdings, Inc. (“ISE Holdings”). ISE Holdings wholly owns ISE, as well as a 31.54% interest in Direct Edge Holdings, LLC (“Direct Edge”). Direct Edge currently owns and operates a facility of the Exchange.<sup>4</sup> In addition, on May 7, 2009, Direct Edge’s direct subsidiaries, EDGA Exchange, Inc.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 61005 (November 16, 2009), 74 FR 61398 (“Notice”).

<sup>4</sup> See Securities and Exchange Act Release No. 59135 (December 22, 2008); 73 FR 79954 (December 30, 2008) (SR-ISE-2008-85) (relating to a corporate transaction in which: (1) ISE Holdings purchased an ownership interest in Direct Edge by contributing cash and the marketplace then operated by ISE Stock Exchange, LLC for the trading of U.S. cash equity securities; and (2) Direct Edge’s wholly-owned subsidiary, Maple Merger Sub LLC became the operator of the marketplace as a facility of ISE.

(“EDGA”) and EDGX Exchange, Inc. (“EDGX”), each filed a Form 1 Application<sup>5</sup> (as amended, the “Form 1 Applications”) with the Commission, to own and operate a registered national securities exchange.

U.S. Exchange Holdings is a wholly-owned subsidiary of Eurex Frankfurt AG (Eurex Frankfurt). Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich AG (“Eurex Zürich”), which in turn is jointly owned by Deutsche Börse AG (“Deutsche Börse”) and SIX Swiss Exchange (“SIX”). SIX is owned by SIX Group (Eurex Frankfurt, Eurex Zürich, Deutsche Börse, SIX, SIX Group, and U.S. Exchange Holdings, Inc. are collectively referred to herein as the “Upstream Owners”).

In connection with the acquisition of ISE Holdings by the Upstream Owners in December 2007,<sup>6</sup> ISE Holdings, U.S. Exchange Holdings, Wilmington Trust Company, as Delaware trustee, and Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann, as trustees, entered into a Trust Agreement, dated as of December 19, 2007 (the “ISE Trust Agreement”). As discussed in the Eurex Acquisition Order, the ISE Trust Agreement is designed to enable the Exchange to operate in a manner that complies with the federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,<sup>7</sup> and to facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.<sup>8</sup>

## II. Description of the Proposal

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<sup>5</sup> The Commission published the Form 1 Applications, as modified by Amendment No. 1, on September 17, 2009. See Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 179 (File No. 10-193 and 10-194).

<sup>6</sup> See Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (File No. SR-ISE-2007-101) (“Eurex Acquisition Order”).

<sup>7</sup> 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

<sup>8</sup> ISE Trust Agreement, Articles V, VI, and VIII.

In the instant filing, the Exchange, on behalf of the U.S. Exchange Holdings, proposed amendments to (i) the Certificate of Incorporation and Bylaws of U.S. Exchange Holdings (the “Corporate Documents”); and (ii) the ISE Trust Agreement, to provide that the Regulatory Provisions (as defined below) in the Corporate Documents and the ISE Trust Agreement, which currently apply only to ISE, also shall apply to any “Controlled National Securities Exchange,” defined to any mean national securities exchange, or facility thereof, that U.S. Exchange Holdings may control, directly or indirectly.

Specifically, and as more fully described in the Notice, the Exchange proposed to replace certain references to “ISE” in the Corporate Documents with the term “each Controlled National Securities Exchange.” These references appear in the ownership and voting limitations sections of the Corporate Documents, as well as other miscellaneous sections, including, but not limited to, the confidentiality section, the books and records section, the compliance with laws section, the jurisdiction section, and the amendments section (the “Regulatory Provisions”). Similarly, the Exchange proposed to amend certain provisions of the ISE Trust Agreement to replace certain references to “ISE” that appear in Articles II through VIII of the ISE Trust Agreement with references to “each Controlled National Securities Exchange.”

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the

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<sup>9</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>10</sup> which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and the rules and regulation thereunder, and Section 6(b)(5) of the Act<sup>11</sup> in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

Section 19(b)<sup>12</sup> of the Act and Rule 19b-4<sup>13</sup> thereunder require a self-regulatory organization to file proposed rule changes with the Commission. Although U.S. Exchange Holdings and the ISE Trust are not self-regulatory organizations, the Corporate Documents and certain provisions of the ISE Trust Agreement are rules of an exchange if they are stated policies, practices, or interpretations (as defined in Rule 19b-4 under the Act) of the exchange, and must therefore be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b-4 thereunder.<sup>14</sup> Accordingly, the Exchange filed the Corporate Documents and the ISE Trust Agreement with the Commission.

The Corporate Documents currently include Regulatory Provisions designed to maintain the independence of the regulatory functions of the Exchange, the sole national securities exchange controlled, directly or indirectly, by U.S. Exchange Holdings.<sup>15</sup> However, the Regulatory Provisions, by their terms, currently do not apply to additional national securities exchanges that U.S. Exchange Holdings might control, directly or

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<sup>10</sup> 15 U.S.C. 78f(b)(1).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(1).

<sup>13</sup> 17 CFR 240.19b-4.

<sup>14</sup> See Eurex Acquisition Order, supra note 6.

<sup>15</sup> See Eurex Acquisition Order, supra note 6.

indirectly, as a result of a subsequent transaction. The Exchange notes that EDGA and EDGX have filed the Form 1 Applications with the Commission that, if approved, would result in U.S. Exchange Holdings, indirectly controlling two additional national securities exchanges.<sup>16</sup> Accordingly, the Exchange proposes to amend the Corporate Documents to apply the Regulatory Provisions to any national securities exchange, or facility thereof, that U.S. Exchange Holdings may control, directly or indirectly. The Commission believes that the amended Corporate Documents are designed to assist any national securities exchange, or facility thereof, that U.S. Exchange Holdings may control, directly or indirectly, in fulfilling their self-regulatory obligations and in administering and complying with the requirements of the Act.<sup>17</sup>

The ISE Trust Agreement contains provisions that are designed to enable the Exchange to operate in a manner that complies with the federal securities laws, and to facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.<sup>18</sup> These provisions, however, are limited solely to the Exchange and not to any other national securities exchange that ISE Holdings might control, directly or indirectly. The Exchange proposes that the ISE Trust Agreement be amended and restated to replace references to ISE with references to any national securities exchange controlled, directly or indirectly, by ISE Holdings, or facility thereof. The Commission believes that amending and restating the ISE Trust Agreement to reference any national securities exchange, or facility thereof, that ISE Holdings may

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<sup>16</sup> See Notice, supra note 3. Approval of this proposed rule change in no way prejudices or determines what actions the Commission may take with respect to the Form 1 Applications.

<sup>17</sup> See Eurex Acquisition Order, supra note 6, for an additional discussion of specific provisions in the Corporate Documents.

<sup>18</sup> ISE Trust Agreement, Articles V, VI, and VIII.

control, directly or indirectly, is designed to facilitate the ability of those national securities exchanges to comply with the requirements of the Act.<sup>19</sup>

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ISE-2008-90), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>19</sup> See Eurex Acquisition Order, supra note 6, for an additional discussion of specific provisions in the ISE Trust Agreement.

<sup>20</sup> 17 CFR 200.30-3(a)(12).