

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59492; File No. SR-ISE-2009-08)

March 3, 2009

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, by International Securities Exchange, LLC Relating to Changes to the Third Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC

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 February 27, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 self-regulatory organization. On March 3, 2009, the Exchange filed Amendment No.1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make changes to the Third Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC ("Third Amended and Restated DE Operating Agreement") to preserve the right of the DB US Financial Markets Holding Corporation, LabMorgan Corporation, Merrill Lynch L.P. Holdings, Inc., Nomura Securities International, Inc., and Sun Partners LLC (together, the "ISE Stock Exchange Consortium Members"), who were formerly minority unitholders of the ISE Stock Exchange, LLC, as defined below, to retain the right to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

designate a Manager to Direct Edge Holdings Board of Managers³ on an ongoing basis.

The text of the proposed rule change is available on the Exchange's Web site

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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 23, 2008, the ISE closed a transaction whereby, among other things, ISE Stock Exchange, LLC ("ISE Stock Exchange"), a Delaware limited liability company, merged with and into Maple Merger Sub, LLC ("Maple Merger Sub"), a Delaware limited liability company and a wholly owned subsidiary of Direct Edge Holdings LLC ("Direct Edge"), with Maple Merger Sub being the surviving entity.⁴ As

³ Pursuant to Section 7.1(a) of the Third Amended and Restated DE Operating Agreement, each Manager is designated as a "manager" of Direct Edge within the meaning of the Securities and [sic] Exchange Act of 1934 (the "Exchange Act").

⁴ See Exchange Act Release No. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008)(SR-ISE-2008-85)(Order approving a proposed rule change, as modified by amendment no. 1, relating to the purchase by International Securities Exchange Holdings, Inc. ("ISE Holdings") of an ownership interest in Direct Edge).

part of the same transaction, ISE Holdings purchased equity interests in Direct Edge such that subsequent to completing the transaction, ISE Holdings owns a 31.54% equity interest in Direct Edge. Following the closing of the transaction and the merger of ISE Stock Exchange into Maple Merger Sub, Maple Merger Sub now owns and operates the marketplace for the trading of U.S. cash equities by Equity Electronic Access Members (“Equity EAMs”) of ISE under the rules of ISE, as a facility, as that term is defined in Section 3(a)(2) of the Exchange Act⁵ of ISE (the “Facility” or “ISE Stock”).⁶

ISE is a registered national securities exchange under Section 6 of the Exchange Act and a self-regulatory organization (“SRO”). As a facility of ISE, the Facility is subject to regulation by ISE and oversight by the Securities and Exchange Commission (“Commission” or “SEC”).

The Third Amended and Restated DE Operating Agreement contains provisions designed to ensure that any changes to the Third Amended and Restated DE Operating Agreement be first reviewed by ISE to determine whether such change must be filed with the SEC. For example, Section 15.2 of the Third Amended and Restated DE Operating Agreement provides that before any amendment to any provision of the Third Amended and Restated DE Operating Agreement shall be effective, such amendment shall be submitted to ISE and if ISE determines that such amendment must be filed with, or filed with and approved by, the SEC before the amendment may be effective under Section 19 of the Exchange Act and the rules promulgated under the Exchange Act or otherwise, then the proposed amendment to the Third Amended and Restated DE Operating

⁵ 15 U.S.C. 78c(a)(2).

⁶ Direct Edge is planning to file two Form 1 Applications to own and operate two national securities exchanges. If the Commission approves the Form 1 Applications, the Facility will cease operations.

Agreement shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

Direct Edge is now proposing to amend and restate the Third Amended and Restated DE Operating Agreement to preserve the right of the ISE Stock Exchange Consortium Members to retain the right to designate a manager to Direct Edge's Board of Managers so long as such ISE Stock Exchange Consortium Members own at least 5% in Direct Edge. Currently the ISE Stock Exchange Consortium Members have a collective ownership interest of 8.76% in Direct Edge. The ISE Stock Exchange Consortium Members have a right, pursuant to Section 7.1(a)(2) of the Third Amended and Restated DE Operating Agreement, to appoint a Manager provided that their Percentage Interest⁷ does not fall below 7.5%. The ISE Stock Exchange Consortium Members expressed concern that their Percentage Interest could be diluted below the 7.5% threshold for appointing a Manager and that potential sales by ISE Stock Exchange Consortium Members to parties who are not ISE Stock Exchange Consortium Members could also have an unintended dilutive effect. Accordingly, Direct Edge is now proposing to amend and restate the Third Amended and Restated DE Operating Agreement to mitigate the potential for such dilutive events.

Specifically, Direct Edge is seeking to amend Section 7.2(a)(2) by: (i) lowering the ownership threshold for appointing a Manager from 7.5% Percentage Interest to a 5% Percentage Interest; and (ii) providing a right of first refusal to the ISE Stock Exchange Consortium Members with respect to certain sales of other ISE Stock Exchange

⁷ "Percentage Interest" means, with respect to a member, the ratio of the number of Units held by the member to the total of all of the issued and outstanding Units, expressed as a percentage.

Consortium Members to parties who are not ISE Stock Exchange Consortium Members. Consistent with the requirements set forth in Section 15.2, the ISE has reviewed the proposed changes to the Third Amended and Restated DE Operating Agreement and has determined that such changes shall not be effective until filed with and approved by the SEC. Accordingly, ISE hereby submits the proposed changes and seeks Commission approval of such changes so that Direct Edge may execute the Fourth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC (“Fourth Amended and Restated DE Operating Agreement”).

Additionally, Direct Edge proposes to make other non-substantive clean-up changes necessary to reflect that this agreement has been changed from the Third Amended and Restated DE Operating Agreement to the Fourth Amended and Restated Operating Agreement.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Exchange Act,⁸ in general, and with Sections 6(b)(1) and (b)(5) of the Exchange Act,⁹ in particular, in that the proposal enables the Exchange and the Facility to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Exchange Act, the rules and regulations thereunder, and SRO rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling,

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(1), (5).

processing information with respect to, and 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.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve 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 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-2009-08 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-2009-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE, Washington, DC

20549. Copies of such filing also will be available for inspection and copying at the principal office 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–2009-08 and should be submitted on or before [date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).