

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61005; File No. SR-ISE-2009-90)

November 16, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change by International Securities Exchange, LLC Relating to Changes to the U.S. Exchange Holdings, Inc. Corporate Documents and International Securities Exchange Trust Agreement in Connection with the Form 1 Applications of EDGA Exchange, Inc. and EDGX Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 9, 2009, the International Securities Exchange, LLC (“ISE” or “Exchange”), 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 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 Substance of the Proposed Rule Change

In connection with a transaction<sup>3</sup> which closed on December 23, 2008, the International Securities Exchange, LLC (“Exchange” or “ISE”) merged the ISE Stock Exchange, LLC, a Delaware limited liability company, with and into Maple Merger Sub, LLC, a Delaware limited liability company and a wholly-owned subsidiary of Direct Edge Holdings LLC (“Direct Edge”). As part of the same transaction, the parent company of the Exchange, International Securities Exchange Holdings, Inc. (“ISE Holdings”), purchased a 31.54% equity interest in Direct Edge. ISE Holdings is a direct wholly-owned subsidiary of U.S. Exchange Holdings, Inc., a Delaware

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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 and Exchange Act Release No. 59135 (December 22, 2008); 73 FR 79954 (December 30, 2008) (SR-ISE-2008-85).

corporation (“U.S. Exchange Holdings”), which in turn is a wholly-owned subsidiary of 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”).

On May 7, 2009, Direct Edge’s direct subsidiaries, EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX,” and together with EDGA, the “DE Exchanges”), each filed a Form 1 Application<sup>4</sup> (the “Form 1 Applications”) with the Securities and Exchange Commission (the “Commission”), to own and operate a registered national securities exchanges. Each of the Upstream Owners will take appropriate steps to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of EDGA and EDGX. Specifically, each of the non-U.S. Upstream Owners (i.e., Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX, and SIX Group,) will adopt resolutions to incorporate those concepts with respect to itself, as well as its board members, officers, employees, and agents (as applicable). The U.S. Upstream Owner, U.S. Exchange Holdings, will include appropriate provisions in its governing documents to incorporate those concepts with respect to itself, as well as its directors, officers, employees, and agents (as applicable).

In this filing, the Exchange is submitting to the Commission: (i) amendments to the Certificate of Incorporation and Bylaws of U.S. Exchange Holdings (the “Corporate Documents”); and (ii) amendments to the Trust Agreement dated as of December 19, 2007, among ISE Holdings, U.S. Exchange Holdings, Wilmington Trust Company, as Delaware

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<sup>4</sup> See Securities and Exchange Act Release No. 60651 (September 11, 2009); 74 FR 179 (September 17, 2009) (File No. 10-193 and 10-194).

trustee, and Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann, as trustees (the “ISE Trust Agreement”). The text of the proposed rule change is available on the Exchange’s Web site [www.ise.com](http://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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In this filing, the Exchange is submitting to the Commission: (i) amendments to the Certificate of Incorporation and Bylaws of U.S. Exchange Holdings (the “Corporate Documents”); and (ii) amendments to the Trust Agreement dated as of December 19, 2007, among ISE Holdings, U.S. Exchange Holdings, Wilmington Trust Company, as Delaware trustee, and Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann, as trustees (the “ISE Trust Agreement”).

U.S. Exchange Holdings’ Corporate Documents

The Exchange proposes to amend certain provisions of the Corporate Documents of U.S. Exchange Holdings in connection with the contemplated ownership and operation of the DE Exchanges. As a result of ISE Holdings owning a 31.54% equity interest in Direct Edge and

possessing certain contractual rights and obligations with respect to Direct Edge, ISE Holdings' parent company, U.S. Exchange Holdings, will control, indirectly, EDGA and EDGX.

Accordingly, the Exchange proposes to broaden certain references that are currently limited to ISE (the sole registered national securities exchange indirectly controlled by U.S. Exchange Holdings) to also reflect ISE Holdings' indirect ownership of EDGA and EDGX. Thus, the Exchange proposes to replace certain references to ISE with 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.

#### ISE Trust Agreement

The Exchange proposes to amend certain provisions of the ISE Trust Agreement in connection with the contemplated ownership and operation of the DE Exchanges. The ISE Trust serves four general purposes: (i) to accept, hold and dispose of Trust Shares<sup>5</sup> on the terms and subject to the conditions set forth therein, (ii) determine whether a Material Compliance Event<sup>6</sup>

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<sup>5</sup> Under the ISE Trust Agreement, the term "Trust Shares" means either Excess Shares or Deposited Shares, or both, as the case may be.

Under the ISE Trust Agreement, the term "Excess Shares" means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article Fourth of the Certificate of Incorporation of ISE Holdings, through ownership of one of the Upstream Owners, without obtaining the approval of the Commission.

Under the ISE Trust Agreement, the term "Deposited Shares" means shares that are transferred to the Trust pursuant to the Trust's exercise of the Call Option.

<sup>6</sup> Under the ISE Trust Agreement, the term "Material Compliance Event" means, with respect to a non-U.S. Upstream Owner, as any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the non-U.S. Upstream Owners to adhere to their respective commitments under the resolutions in any material respect.

has occurred or is continuing; (iii) determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option<sup>7</sup>; and (iv) transfer Deposited Shares from the Trust to the Trust Beneficiary<sup>8</sup> as provided in Section 4.2(h) therein.

Accordingly, the Exchange proposes to broaden certain references that are currently limited to ISE (the sole registered national securities exchange controlled by ISE Holdings) to also reflect ISE Holdings' indirect ownership of the EDGA and EDGX. Thus, the Exchange proposes to replace certain references to ISE with each "Controlled National Securities Exchange." These references appear in Article II through Article VIII, inclusive.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Exchange Act,<sup>9</sup> in general, and with Sections 6(b)(1) and (b)(5),<sup>10</sup> in particular, in that the proposal enables the Exchange 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 remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Moreover, the proposed rule change will ensure that U.S. Exchange Holdings, the direct parent company of ISE Holdings and

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<sup>7</sup> Under the ISE Trust Agreement, the term "Call Option" means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

<sup>8</sup> Under the ISE Trust Agreement, the term "Trust Beneficiary" means U.S. Exchange Holdings, Inc.

<sup>9</sup> See 15 U.S.C. 78f.

<sup>10</sup> See 15 U.S.C. 78f(b)(3), (5) [sic].

indirect affiliate of the DE Exchanges, will not act in a way that is inconsistent with the DE Exchanges' obligations under the Exchange Act.

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 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 Exchange consents, the Commission will:

- (A) by order approve the 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](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2009-90 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2009-90. 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 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 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-2009-90 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).