

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-FINRA-2008-060 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 Number SR-FINRA-2008-060. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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-FINRA-2008-060 and should be submitted on or before January 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59127; File No. SR-ISE-2008-94]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

December 19, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 10, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 14 Premium Products.³ The text of the proposed rule change is available on the Exchange's Web site (<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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Premium Products is defined in the Schedule of Fees as the products enumerated therein.

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

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the Direxion Energy Bear 3x Shares ("ERY"), the Direxion Energy Bull 3x Shares ("ERX"), the Direxion Financial Bear 3x Shares ("FAZ"), the Direxion Financial [Bull] 4x 3x Shares ("FAS"), the Direxion Large Cap Bear 3x Shares ("BGZ"), the Direxion Large Cap Bull 3x Shares ("BGU"), the Direxion Small Cap Bear 3x Shares ("TZA"), the Direxion Small Cap Bull 3x Shares ("TNA"),⁵ the Ultra Basic Materials ProShares ("UYM"),⁶ the iShares Russell Midcap Value Index

⁴ See e-mail from Samir Patel, Assistant General Counsel, International Securities Exchange, to Richard Holley, Senior Special Counsel, Division of Trading and Markets, Commission, dated December 18, 2008 (correcting typographical error for product associated with ticker symbol FAS from Bear to Bull).

⁵ The Russell 1000® Energy Index, Russell 1000® Financial Services Index, Russell 1000® Index and Russell 2000® Index are trademarks of Frank Russell Company ("Russell") and have been licensed for use by Direxion Shares ETF Trust. All other trademarks and service marks are the property of their respective owners. The Direxion Energy Bear 3x Shares ("ERY"), the Direxion Energy Bull 3x Shares ("ERX"), the Direxion Financial Bear 3x Shares ("FAZ"), the Direxion Financial [Bull] 3x Shares ("FAS"), the Direxion Large Cap Bear 3x Shares ("BGZ"), the Direxion Large Cap Bull 3x Shares ("BGU"), the Direxion Small Cap Bear 3x Shares ("TZA") and the Direxion Small Cap Bull 3x Shares ("TNA") are not sponsored, endorsed, issued, sold or promoted by Russell. Russell has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on ERY, ERX, FAZ, FAS, BGZ, BGU, TZA and TNA or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on ERY, ERX, FAZ, FAS, BGZ, BGU, TZA and TNA or with making disclosures concerning options on ERY, ERX, FAZ, FAS, BGZ, BGU, TZA and TNA under any applicable federal or state laws, rules or regulations. Russell does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

⁶ "Dow Jones" and "Dow Jones U.S. Basic MaterialsSM" are service marks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by ProFunds Trust. All other trademarks and service marks are the property of their respective owners. The Ultra Basic Materials ProShares ("UYM") is not sponsored, endorsed, issued, sold or promoted by Dow Jones. Dow Jones has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on UYM or (ii) to use and refer to any of its trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on UYM or with making disclosures concerning options on UYM under any applicable federal or state laws, rules or regulations. Dow Jones does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

Fund (“IWS”),⁷ the Vanguard® Energy ETF (“VDE”), the Vanguard® Large-Cap ETF (“VV”), the Vanguard® Small-Cap ETF (“VB”) and the Vanguard® Value ETF (“VTV”).⁸ The Exchange represents that ERY, ERX, FAZ, FAS, BGZ, BGU, TZA, TNA, UYM, IWS, VTV, VV, VB and VDE are eligible for options trading because they constitute “Exchange-Traded Fund Shares,” as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on ERY, ERX, FAZ, FAS, BGZ, BGU, TZA, TNA, UYM, IWS, VTV, VV, VB and VDE.⁹ The

⁷ iShares® is a registered trademark of Barclays Global Investors, N.A. (“BGI”), a wholly owned subsidiary of Barclays Bank PLC. “Russell Midcap® Value Index” is a trademark of Frank Russell Company (“Russell”) and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. iShares Russell Midcap Value Index Fund (“IWS”) is not sponsored, sold or endorsed by Russell. Russell and BGI have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on IWS or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on IWS or with making disclosures concerning options on IWS under any applicable federal or state laws, rules or regulations. Russell and BGI do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

⁸ The Vanguard Group, Vanguard ETF and Vanguard are trademarks of The Vanguard Group, Inc. (“Vanguard”). The Vanguard® Energy ETF (“VDE”) tracks the Morgan Stanley Capital International® (MSCI®) U.S. Investable Market Energy Index. The Vanguard® Large-Cap ETF (“VV”) tracks the MSCI U.S. Prime Market 750 Index. The Vanguard® Small-Cap ETF (“VB”) tracks the MSCI U.S. Small Cap 1750 Index. The Vanguard® Value ETF (“VTV”) tracks the MSCI U.S. Prime Market Value Index. The MSCI Indexes are the exclusive property of MSCI. MSCI and the MSCI Index names are service marks of MSCI or its affiliates and have been licensed for use for certain purposes by Vanguard. All other marks are the exclusive property of their respective owners. MSCI does not sponsor, endorse, or promote VDE, VV, VB, and VTV and makes no representation regarding the advisability of investing in VDE, VV, VB, and VTV. Vanguard has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on VDE, VV, VB, and VTV or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on VDE, VV, VB, and VTV or with making disclosures concerning options on VDE, VV, VB, and VTV under any applicable federal or state laws, rules or regulations. Vanguard does not sponsor, endorse, or promote such activity by ISE, and is not affiliated in any manner with ISE.

⁹ These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders (“Linkage P Orders”) and Linkage Principal Acting as Agent Orders (“Linkage P/A Orders”). The amount of the execution fee

amount of the execution fee for products covered by this filing shall be \$0.18 per contract for all Public Customer Orders¹⁰ and \$0.20 per contract for all Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.¹¹ Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be \$0.45 per contract.¹² Further, since options on ERY, ERX, FAZ, FAS, BGZ, BGU, TZA, TNA, UYM, IWS, VTV, VV, VB and VDE are multiply listed, the Exchange’s Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange’s goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹³ in general, and furthers the objectives of Section 6(b)(4),¹⁴ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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.

charged by the Exchange for Linkage P Orders and Linkage P/A Orders is \$0.24 per contract side and \$0.15 per contract side, respectively. See Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR-ISE-2008-52).

¹⁰ Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

¹¹ The Exchange applies a sliding scale, between \$0.01 and \$0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

¹² The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange’s Facilitation and Solicitation Mechanisms is \$0.19 per contract.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act¹⁵ and Rule 19b-4(f)(2)¹⁶ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2008-94 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 Number SR-ISE-2008-94. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 19b-4(f)(2) [sic].

available for inspection and copying at the principal office of ISE. 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 No. SR-ISE-2008-94 and should be submitted on or before January 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59135; File No. SR-ISE-2008-85]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Purchase by International Securities Exchange Holdings, Inc., of an Ownership Interest in Direct Edge Holdings, Inc.

December 22, 2008.

I. Introduction

On November 7, 2008, 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 (the "Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change in connection with corporate transactions (the "Transactions") in which, among other things: (1) The parent company of ISE, International Securities Exchange Holdings, Inc. ("ISE Holdings"), will purchase an ownership interest in Direct Edge Holdings LLC ("Direct Edge") by contributing cash and the marketplace currently operated by ISE Stock Exchange, LLC ("ISE Stock Exchange") for the trading of U.S. cash equity securities; and (2) Direct Edge's wholly-owned subsidiary, Maple Merger Sub LLC ("Merger Sub") will operate the marketplace as a facility of ISE. The proposed rule change was published for comment in the **Federal Register** on

November 17, 2008.³ The Commission received no comments regarding the proposal. On December 17, 2008, ISE filed Amendment No. 1 to the proposal.⁴ This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

Currently, ISE Stock Exchange operates, under the ISE's rules and as a "facility," as defined in Section 3(a)(2) of the Act,⁵ of ISE, a marketplace for the trading of U.S. cash equity securities by Equity Electronic Access Members ("Equity EAMs") of ISE (the "Facility").⁶ Direct Edge wholly owns and operates Direct Edge ECN LLC ("DE ECN"), a registered broker-dealer, electronic communications network ("ECN"), and Equity EAM that submits limit orders to the Facility for display and execution. As part of the Transactions to be entered into by ISE, ISE Holdings, Direct Edge, and other parties: (1) ISE Holdings will purchase a 31.54% ownership interest in Direct Edge; and (2) ISE Stock Exchange will merge with and into Merger Sub, a Delaware limited liability company and wholly-owned subsidiary of Direct Edge, with Merger Sub as the surviving entity. Following the closing of the Transactions, ISE Holdings will own 31.54% of Direct Edge, Direct Edge will own all of the equity interests of Merger Sub, Merger Sub will operate the Facility as a facility of ISE, and Direct Edge will continue to own and operate

³ See Securities Exchange Act Release No. 58918 (November 7, 2008), 73 FR 67909 ("Notice").

⁴ Amendment No. 1: (1) Corrects minor errors in the text of the Merger Sub LLC Agreement and the DE Operating Agreement (as defined below); and (2) revises ISE Rule 312(a) to clarify that ISE will enter into a plan with a non-affiliated self-regulatory organization ("SRO") pursuant to Rule 17d-2 under the Act to relieve ISE of regulatory responsibilities for Direct Edge ECN with respect to common rules of ISE and the unaffiliated SRO, and ISE will enter into a regulatory services contract with a non-affiliated SRO to perform regulatory responsibilities for Direct Edge ECN for unique ISE rules. Because Amendment No. 1 is technical in nature, the Commission is not required to publish Amendment No. 1 for comment.

⁵ 15 U.S.C. 78c(a)(2). Under Section 3(a)(2) of the Act, the term "facility," when used with respect to an exchange, includes "its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service."

⁶ See Securities Exchange Act Release No. 54399 (September 1, 2006), 71 FR 53728 (September 12, 2006) (File No. SR-ISE-2006-45) (order approving the Facility). An Equity EAM is an Electronic Access Member authorized by ISE to trade on the ISE Stock Exchange. See ISE Rule 2100(c)(6).

DE ECN, which intends to continue to submit limit orders to the Facility for display and execution.

As limited liability companies, ownership in Direct Edge and in Merger Sub is represented by limited liability membership interests. The holders of such interests are referred to as "Members."⁷ Following the closing of the Transactions, Direct Edge will be the sole member of Merger Sub. The Members of Direct Edge and their respective ownership interests will be: ISE Holdings (31.54%); Citadel Derivatives Group LLC (19.9%); The Goldman Sachs Group, Inc. (19.9%); Knight/Trimark, Inc. (19.9%); and the ISE Stock Exchange Consortium Members (collectively 8.76%).⁸

As the self-regulatory organization ("SRO") for the Facility, ISE will have regulatory responsibility for the activities of the Facility.⁹ In the current proposal, ISE seeks the Commission's approval of: (1) The Limited Liability Company Agreement of Merger Sub ("Merger Sub LLC Agreement"), which establishes the governance structure of

⁷ With respect to Merger Sub, "Member" means Direct Edge, which initially will be the sole member of Merger Sub, and any Additional Members admitted pursuant to Section 4.3 of the Merger Sub LLC Agreement. The admission of Additional Members is subject to ISE's authority under Section 1.6 of the Merger Sub LLC Agreement, and each Additional Member must become a party to the Merger Sub LLC Agreement. See Merger Sub LLC Agreement, Sections 4.3(a) and (c). In addition, no Person, other than Direct Edge, may acquire an ownership interest of more than 20% of Merger Sub without the Commission's approval. See Merger Sub LLC Agreement, Sections 7.2(a) and (b). With respect to Direct Edge, "Member" means any Person (i) executing the DE Operating Agreement as a Member of DE on the effective date of the Transactions (the "Effective Date"); (ii) admitted as a Member as of the Effective Date upon the effectiveness under Delaware law of the merger of ISE Stock Exchange with and into Merger Sub; or (iii) subsequently admitted as an additional or substitute member of Direct Edge. For as long as Direct Edge controls Merger Sub and the Facility is a facility of a national securities exchange, no Person may own more than 40% of Direct Edge and no ISE member (including Equity EAMs) may own more than 20% of Direct Edge without the Commission's approval. See DE Operating Agreement, Sections 12.1(a) and (b).

⁸ The ISE Stock Exchange Consortium Members are: Bear Rex, Inc.; DB US Financial Markets Holding Corporation; Canopy Acquisition Corporation; IB Exchange Corp.; LabMorgan Corporation; Merrill Lynch L.P. Holdings, Inc.; Nomura Securities International, Inc.; Sun Partners LLC; and VCM Capital Markets, LLC.

⁹ ISE represents that it will continue to have adequate funds to discharge all regulatory functions related to the Facility. ISE represents, further, that Merger Sub, the operator of the Facility, will not be entitled to any revenue generated in connection with penalties, fines, and regulatory fees that ISE may assess against ISE Members in connection with trading on the Facility. Rather, all regulatory fines, penalties, and fees assessed against and paid by ISE Members to ISE in connection with trading on the Facility will remain with ISE. See Notice, *supra* note 3.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.