

procedures and practices.<sup>6</sup> Nasdaq proposed to amend the NASDAQ OMX's By-Laws to codify the majority voting standard for uncontested elections contained in the Corporate Governance Guidelines; contested elections would remain subject to the plurality standard.

For uncontested elections, Nasdaq proposed to amend Article IV, Section 4.4 of the NASDAQ OMX By-Laws to impose a majority voting standard, instead of the plurality voting standard, that would require directors to be elected by the holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present. However, because a director holds office until his or her successor is duly elected and qualified, any incumbent director-nominee who fails to receive the requisite vote would not automatically cease to be a director. Instead, NASDAQ OMX would have such director continue as a "holdover director" until such director's death, resignation or removal, or until his or her successor is duly elected and qualified. To this end, the proposal also includes a provision that would require any incumbent nominee, as a condition to his or her nomination for election, to submit in writing an irrevocable resignation, the effectiveness of which would be conditioned upon the director's failure to receive the requisite vote in any uncontested election and the Board's acceptance of the resignation. The resignation would be considered by the Nominating & Governance Committee and acted upon by the Board in the same manner as a resignation tendered under current rules.<sup>7</sup> Acceptance of that resignation by the Board would be in accordance with the policies and procedures adopted by the Board for such purpose.<sup>8</sup>

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 proposed

rule change is consistent with Section 6(b)(1) of the Act,<sup>10</sup> which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply and to enforce compliance by its members and persons associated with its members with the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

The Commission believes that the proposed rule change to amend the NASDAQ OMX By-Laws to adopt a majority vote standard for uncontested elections is consistent with the Act. The Commission believes that the proposed rule change is designed to allow the members of NASDAQ OMX's Board of Directors to be elected in a manner that closely reflects the desires of its shareholders, while also providing a process for addressing the circumstance when a director fails to receive a majority of votes in an uncontested election.<sup>12</sup> The Commission notes that Nasdaq explained that the process for contested elections is to remain unchanged because if a majority voting standard were to apply in a contested election, the likelihood of a "failed election" (*i.e.*, a situation in which no director receives the requisite vote) would be more pronounced.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2010-025), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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

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

<sup>12</sup> The Commission notes that Nasdaq represented that the proposed change would not affect NASDAQ OMX's general election requirements, specifically the voting limitations contained in NASDAQ OMX's certificate of incorporation. The Commission also notes that Nasdaq represented that if NASDAQ OMX seeks to further amend its By-Laws with respect to director elections, including the adoption of any policies and procedure with respect to such elections, it will file a proposed rule change with the Commission.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61866; File No. SR-ISE-2010-31]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Amounts That Direct Edge ECN, in Its Capacity as an Introducing Broker for Non-ISE Members, Passes Through to Such Non-ISE Members

April 7, 2010.

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 April 6, 2010, 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 and II 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, and is approving the proposal on an accelerated basis.

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

The Exchange proposes to modify the amounts that Direct Edge ECN ("DECN"), in its capacity as an introducing broker for non-ISE Members, passes through to such non-ISE Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.com>.

#### 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 III 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.

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

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

<sup>6</sup> The proposed rule change incorporates a modified version of the election procedures and practices contained in the NASDAQ OMX Corporate Governance Guidelines.

<sup>7</sup> See NASDAQ OMX By-Law Article IV, Section 4.5.

<sup>8</sup> In the Notice, Nasdaq stated that NASDAQ OMX's policies and procedures pertaining to the acceptance of the resignation of its directors are specified in By-Law Article IV, Section 4.4, and that there are no additional policies and procedures other than the provisions in the By-Laws. See Notice, *supra* note 3.

<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).

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

1. Purpose

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA.<sup>3</sup> The changes made pursuant to SR-ISE-2010-29 became operative on April 5, 2010. On April 5, 2010, the ISE filed for immediate effectiveness a proposed rule change to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members<sup>4</sup> to: (i) Eliminate a rebate on EDGX for securities priced less than \$1; and (ii) to lower the removal rate on EDGX for securities priced less than \$1.<sup>5</sup> The changes made pursuant to SR-ISE-2010-29 became operative on April 5, 2010.

In its capacity as a member of ISE, DECEN currently serves as an introducing broker for the non-ISE Member subscribers of DECEN to access EDGX and EDGA. DECEN, as an ISE Member and introducing broker, receives rebates and is assessed charges from DECEN for transactions it executes on EDGX or EDGA in its capacity as introducing broker for non-ISE Members. Since the amounts of such rebates and charges were changed pursuant to SR-ISE-2010-29, DECEN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECEN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive and are charged will be the same as the amounts that ISE Members receive and are charged.

ISE is seeking accelerated approval of this proposed rule change, as well as an effective date of April 5, 2010. ISE represents that this proposal will ensure

that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will in effect receive and be charged equivalent amounts and that the imposition of such amounts will begin on the same April 5, 2010 start date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>7</sup> 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. In particular, this proposal will ensure that dues, fees and other charges imposed on ISE Members are equitably allocated to both ISE Members and non-ISE Members (by virtue of the pass-through described above).

*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. 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 Number SR-ISE-2010-31 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.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

All submissions should refer to File Number SR-ISE-2010-31. 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,<sup>8</sup> 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 Web site viewing and printing 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 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 Number SR-ISE-2010-31 and should be submitted on or before May 5, 2010.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

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> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)<sup>10</sup> of the Act, which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.

As described more fully above, ISE recently amended DECEN's fee schedule for ISE Members pursuant to SR-ISE-

<sup>8</sup> The text of the proposed rule change is available on ISE's Web site at <http://www.ise.com>, on the Commission's Web site at <http://www.sec.gov>, at ISE, and at the Commission's Public Reference Room.

<sup>9</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>3</sup> This fee filing relates to the trading facility operated by ISE and not EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge ECN LLC (EDGA and EDGX) will cease to operate in its capacity as an electronic communications network following the commencement of operations of EDGA Exchange, Inc. and EDGX Exchange, Inc. as national securities exchanges.

<sup>4</sup> References to ISE Members in this filing refer to DECEN Subscribers who are ISE Members.

<sup>5</sup> In SR-ISE-2010-29, the Exchange made the following changes to the fee schedule: (i) Eliminated the current rebate for adding liquidity on EDGX of 0.15% of the total dollar value of the transaction (number of shares multiplied by price) for securities priced less than \$1.00; and (ii) lowered the removal rate on EDGX for removing liquidity in securities priced less than \$1.00 from .30% of the total dollar value of the transaction to 0.10% of the total dollar value of the transaction. This was done because: (i) There was not an appropriate relationship between the size of the rebate offered and the minimum trading increment for securities priced less than \$1.00; and (2) the Exchange sought to incentivize the removal of liquidity from EDGX in securities priced less than \$1.00.

2010–29 (the “Member Fee Filing”). The fee changes made pursuant to the Member Fee Filing became operative on April 5, 2010. DECN receives rebates and is charged fees for transactions it executes on EGDx or EDGA in its capacity as an introducing broker for its non-ISE member subscribers. The current proposal, which will apply retroactively to April 5, 2010, will allow DECN to pass through the revised rebates and fees to the non-ISE member subscribers for which it acts as an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide rebates and charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.<sup>11</sup>

ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register**. As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the revised rebate and fees established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebates and fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised rebates and fees retroactively to April 5, 2010, the revised rebates and fees will have the same effective date, thereby promoting consistency in the DECN’s fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR–ISE–2010–31) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61859; File No. SR–CBOE–2010–018]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade CBOE Gold ETF Volatility Index Options

April 7, 2010.

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 March 18, 2010, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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 Exchange. On March 22, 2010, CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice, as amended, 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

CBOE proposes to amend certain of its rules to provide for the listing and trading of options that overlie the CBOE Gold ETF Volatility Index (“GVZ”), which will be cash-settled and will have European-style exercise. The text of the rule proposal is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary and at the Commission.

#### 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on the CBOE Gold ETF Volatility Index (“GVZ”).

##### Index Design and Calculation:

The calculation of GVZ is based on the VIX methodology applied to options on the SPDR Gold Trust (“GLD”). The index was introduced by CBOE on August 1, 2008 and has been disseminated in real-time on every trading day since that time.<sup>4</sup>

GVZ is an up-to-the-minute market estimate of the expected volatility of GLD calculated by using real-time bid/ask quotes of CBOE listed GLD options. GVZ uses nearby and second nearby options with at least 8 days left to expiration and then weights them to yield a constant, 30-day measure of the expected (implied) volatility.

For each contract month, CBOE will determine the at-the-money strike price. The Exchange will then select the at-the-money and out-of-the money series with non-zero bid prices and determine the midpoint of the bid-ask quote for each of these series. The midpoint quote of each series is then weighted so that the further away that series is from the at-the-money strike, the less weight that is accorded to the quote. Then, to compute the index level, CBOE will calculate a volatility measure for the nearby options and then for the second nearby options. This is done using the weighted mid-point of the prevailing bid-ask quotes for all included option series with the same expiration date. These volatility measures are then interpolated to arrive at a single, constant 30-day measure of volatility.<sup>5</sup>

CBOE will compute values for GVZ underlying option series on a real-time basis throughout each trading day, from 8:30 a.m. until 3 p.m. (CT). GVZ levels will be calculated by CBOE and disseminated at 15-second intervals to major market data vendors.

##### Options Trading:

GVZ options will be quoted in index points and fractions and one point will equal \$100. The minimum tick size for series trading below \$3 will be 0.05 (\$5.00) and above \$3 will be 0.10

<sup>4</sup> CBOE maintains a micro-site for GVZ options at: <http://www.cboe.com/gvz>. See proposed amendment to Rule 24.9(a)(3).

<sup>5</sup> See proposed amendment to Interpretation and Policy .01 to Rule 24.1 (designating the Exchange as the reporting authority for GVZ).

<sup>11</sup> *Id.*

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> In Amendment No. 1, CBOE made technical, non-substantive corrections to the rule text.