

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60442; File No. SR-ISE-2009-57)

August 5, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amending the Direct Edge ECN Fee Schedule

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 July 31, 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. 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 Exchange proposes to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members<sup>3</sup> to (i) create a new tier, called the Full Sweep Tier, to provide a rebate for ISE Members that use ROUT orders that meet a volume threshold for amount of liquidity added on EDGX and to (ii) adopt new fees and rebates.

All of the changes described herein are applicable to ISE Members. The text of the proposed rule change is available on the Exchange's Internet website at <http://www.ise.com>.

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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> References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

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.

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. On July 1, 2009,<sup>4</sup> the Exchange adopted a new Ultra Tier Rebate, as defined below, whereby ISE Members are provided a \$0.0032 rebate per share for securities priced at or above \$1.00 when ISE Members add liquidity on EDGX if the attributed MPID satisfies one of the following criteria on a daily basis, measured monthly: (i) adding 100,000,000 shares or more on EDGX; or (ii) adding 50,000,000 shares or more of liquidity to EDGX, so long as added liquidity on EDGX is at least 20,000,000 shares greater than the previous calendar month. The rebate described above is referred to as an "Ultra Tier Rebate" on the DECN fee schedule.

The Exchange is now proposing to establish an additional tier called the Full Sweep Tier, whereby ISE Members are provided a \$0.0035 rebate per share for securities priced at or above \$1.00 when ISE Members add liquidity on EDGX if the attributed MPID use of the ROUT order type adds 50,000,000 shares or more of liquidity to EDGX on a daily basis, measured monthly. A ROUT order type that is sent to EDGX is an order type that does a full sweep of the EDGX

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<sup>4</sup> See Securities and Exchange Act Release No. 60232 (July 2, 2009), 74 FR 33309 (July 10, 2009)(SR-ISE-2009-43).

book, before being exposed to Enhanced Liquidity Providers (“ELPs”).<sup>5</sup> This order type will then route to away market centers if there is additional unexecuted liquidity. This order type is primarily used for agency orders, especially retail order flow. The rebate is designed to encourage the use of this particular type of liquidity.

The Exchange also proposes to adopt additional fees and rebates. First, the Exchange proposes to adopt a fee of \$0.0024 per share for securities priced at or above \$1.00 which add liquidity to LavaFlow ECN (“LavaFlow”) and are routed from either EDGX or EDGA. Such a strategy is deemed a ROLF routing strategy, which is a destination specific routing strategy that will first sweep the EDGA or EDGX order book before being delivered to LavaFlow. A conforming amendment will be made to the fee schedule to yield an “M” flag to account for this fee. Conversely, for liquidity that is routed through either EDGA or EDGX and removes liquidity from LavaFlow, ISE members will be charged \$0.0029 per share for securities priced at or above \$1.00. Such situation will yield a flag of “U.” However, if an ISE member posts an average of 50,000 shares or more using a ROLF routing strategy, yielding flag M, then such ISE member’s fee, when removing liquidity from LavaFlow, will decrease to \$0.0022 per share and yield flag U. Finally, the Exchange proposes to rebate \$0.0025 per share for securities priced at or above \$1.00 when ISE members add liquidity on EDGX via an EDGA-originated ROUC routing strategy.<sup>6</sup> Such situation will yield liquidity Flag “P.”

The fee changes discussed in this filing will become operative on August 1, 2009.

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<sup>5</sup> DECN currently operates a program known as the “Enhanced Liquidity Provider” (“ELP”) program on its two trading platforms, EDGX and EDGA, pursuant to which parties entering orders into DECN can elect to display their marketable orders to designated liquidity providers before the order is routed or cancelled.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>8</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, adopting the Full Sweep Tier Rebate provides pricing incentives to market participants who route orders to DECN, allowing DECN to remain competitive. ISE notes that DECN operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to DECN. ISE believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to DECN rather than competing venues.

### 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.

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<sup>6</sup> ROUC designated orders are multi-destination orders that sweep the internal order book and ELP destinations before any unfilled quantity is routed to low cost destinations.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 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 Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2009-57 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-2009-57. 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

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

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 10:00 am and 3:00 pm. 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-2009-57 and should be submitted on or before [insert date 21 days after 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>10</sup> 17 CFR 19b-4(f)(2).

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