

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60769; File No. SR-ISE-2009-68)

October 2, 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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 30, 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 Members³ to (i) adopt new fees and rebates and associated flags; (ii) amend the criteria for meeting the Ultra Tier; (iii) to amend the descriptions of certain flags in the schedule; and (iv) to amend its fee schedule to reflect pass through charges of other market centers. All of the changes described herein are applicable to ISE Members.

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>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ References to ISE Members in this filing refer to DECEN 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, 2009,⁴ 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 amend the criteria for meeting this tier by allowing ISE Members to receive 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 posts 1% of the Total Consolidated Volume (“TCV”) in average daily volume (“ADV”). TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape

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

A, B, and C securities. At the same time, the Exchange is proposing to delete the Full Sweep Tier, which provided a \$0.0035 rebate per share for liquidity added on EDGX if the attributed MPID added 50,000,000 shares or more on a daily basis, measured monthly, by using the ROUT routing strategy.

The Ultra Tier rebate (\$0.0032 per share), which is a higher rebate than the Super Tier (\$0.0030 per share), is also more difficult to reach than the Super Tier rebate, as a higher volume threshold is required based on recent TCV figures. For example, 1% of the average TCV for July 2009 (8.8 billion) was approximately 88 million shares. This threshold far exceeds the criteria to meet the Super Tier rebate. In addition, the higher rebate also results in part from lower administrative costs associated with higher volume.

The Exchange also proposes to adopt additional fees and rebates. First, the Exchange proposes to add new fee categories for the INET order type. When a member routes to Nasdaq using the INET order type and removes liquidity on Tapes A or C, the member would incur a fee of \$0.0030 on either EDGA or EDGX. Such situation would yield new Flag "L". The INET order type sweeps the EDGA or EDGX book, and routes the remainder to Nasdaq. If the order is marketable, it will remove liquidity from the EDGA or EDGX book, as applicable, first. If the order is non-marketable, the order will post on Nasdaq. With regards to a Member's use of the INET order type for Tapes A or C securities, Members routing an ADV: (i) less than 5,000,000 shares will be charged \$0.0030 per share, as described in the schedule; (ii) equal to or greater than 5,000,000 shares but less than 20,000,000 shares will be charged \$0.0027 per share; (iii) equal to or greater than 20,000,000 shares but less than 30,000,001 shares will be charged \$0.0026 per share; and (iv) equal to or greater than 30,000,001 shares will be charged \$0.0025 per share. The rates, in all cases, are calculated for shares removed from Nasdaq. The Exchange

believes that these tier-based rates will incent Members to sweep the EDGA or EDGX book first and then offer a discounted rate to Nasdaq's rates if the remainder of the order is routed to Nasdaq. These discounted rates arise in part from reduced administrative costs associated with certain volume levels.

Similarly, the Exchange also proposes to add an additional fee category for the INET order type when a member routes to Nasdaq using the INET order type and removes liquidity on Tape B. Such situation would yield new flag "2". With regards to a Member's use of the INET order type for Tape B securities, Members routing an ADV: (i) less than 20,000,000 shares will be charged \$0.0030 per share, as described in the schedule; (ii) equal to or greater than 20,000,000 but less than 30,000,001 shares will be charged \$0.0029 per share; and (iii) equal to or greater than 30,000,001 shares will be charged \$0.0028 per share.

Furthermore, the Exchange proposes to adopt a new rebate. Members will receive a rebate of \$0.0032 per share for all liquidity posted on EDGX if they add or route at least 10,000,000 shares of ADV to EDGX prior to 9:30 AM EST or after 4:00 PM EST (includes all flags except N and W) and add a minimum of 75,000,000 shares of ADV on EDGX in total, including during both market hours and pre and post-trading hours. This rebate is designed to reward members who add or route significant order flow to EDGX both during market hours and pre and post-trading hours. It is also designed to increase the liquidity of the pre and post markets.

The Exchange proposes to amend the descriptions of the "N" and "W" flags to display which Tape liquidity is removed from. For the "N" flag, the Exchange proposes to amend the description to state that liquidity is removed from Tapes B & C. For the "W" flag, the Exchange proposes to amend the description to state that liquidity is removed from Tape A.

Finally, the Exchange proposes to pass through to Exchange members the actual transaction fees assessed by away markets. Specifically, the Exchange is proposing to amend its fees schedule to reflect Nasdaq's reduction in rebate from 0.0006 to 0.0001 for removing liquidity from Nasdaq OMX BX.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4),⁶ 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 an additional rebate and providing tier-based rates if Members use the INET order type provide 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. The rebates also provide incentives to members who add or route significant order flow to EDGX both during market hours and pre and post-trading hours and are designed to increase the liquidity of the pre and post markets. Finally, the Exchange

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

believes that the proposed rates are equitable in that they apply uniformly to all Members and provide higher rebates for higher volume thresholds, resulting from lower administrative costs.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act⁷ and Rule 19b-4(f)(2)⁸ thereunder. At any time within 60 days⁸ 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

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2009-68 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-2009-68. 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 10:00 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-2009-68 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.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).