

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61289; File No. SR-ISE-2009-108)

January 5, 2010

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 December 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 Members<sup>3</sup> to simplify its fee schedule by (i) eliminating the Super Tier and Ultra Tier rebates and (ii) amending its fees and rebates. 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>.

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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 whereby ISE Members were 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 on 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 DECEN fee schedule.

On October 1, 2009,<sup>5</sup> the Exchange amended 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

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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).

exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B, and C securities.

On May 1, 2009,<sup>6</sup> the Exchange amended the Super Tier rebate, which provides a \$0.0030 rebate per share for liquidity added on EDGX if the attributed MPID satisfies any of the following three criteria on a daily basis, measured monthly: (i) adding 40,000,000 shares or more on either EDGX, EDGA, or EDGX and EDGA combined; (ii) adding 20,000,000 shares or more on either EDGX, EDGA, or EDGX and EDGA combined and routing 20,000,000 shares or more through EDGA; or (iii) adding 10,000,000 shares or more of liquidity to EDGX, so long as added liquidity on EDGX is at least 5,000,000 shares greater than the previous calendar month.

To adjust DECN's pricing model to be more consistent with other exchanges (even though DECN is not an exchange),<sup>7</sup> the Exchange is now proposing to de-link the pricing structures of DECN to eliminate pricing offers that are contingent on activity across both platforms. Secondly, the Exchange is proposing to simplify its fee schedule, which will provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to the EDGA and EDGX Exchanges (assuming their respective Form 1 applications are approved by the

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<sup>5</sup> See Securities Exchange Act Release No. 60769 (October 2, 2009) 74 FR 51903 (October 8, 2009)(SR-ISE-2009-68).

<sup>6</sup> See Securities Exchange Act Release No. 59887 (May 7, 2009), 74 FR 22792 (May 14, 2009)(SR-ISE-2009-24).

<sup>7</sup> On May 7, 2009, each of EDGA Exchange, Inc. and EDGX Exchange, Inc. (the "EDGA and EDGX Exchanges") filed their respective Form 1 applications to register as a national securities exchange ("Form 1") pursuant to Section 6 of the Securities Exchange Act of 1934. On July 30, 2009, the Exchanges filed Amendment No. 1 to the Form 1 Application. On September 17, 2009, the Form 1 was published in the Federal Register for notice and comment. See Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009).

Commission). Finally, the Exchange believes that the proposed rate changes will help to maintain the competitive position of DECN.

To effectuate the foregoing, the Exchange proposes to delete the Super Tier and Ultra Tier rebates discussed above and proposes the amendments, described below, to its fees and rebates.

For securities priced less than \$1, the Exchange proposes to change fees for adding liquidity on EDGX from free to 0.15% of the dollar value of the transaction. For removing liquidity on EDGX, the Exchange proposes to change the removal fee from 0.20% of the dollar value of the transaction to 0.30% of the dollar value of the transaction.

DECN does not charge port charges to Members executing 200,000 shares or more of combined liquidity on EDGX and/or EDGA on a monthly basis, per port. Any port (or number of ports) in excess of this, however, is currently charged \$50 per port, per month. The Exchange is proposing to eliminate this contingency and provide that all port charges are free irrespective of how much volume the Member executes.

Currently, the Exchange provides that the current removal rate on EDGA, a rebate of \$0.0002 per share, is contingent on the attributed MPID adding or routing a minimum average daily share volume, measured monthly, of 50,000 shares on EDGA. The Exchange proposes to provide that hidden order executions (Flag H) also count toward this volume. As a result, any attributed MPID not meeting this minimum will be charged \$0.0030 per share for removing liquidity from EDGA. In addition, the Exchange proposes to eliminate this contingency (in footnote 1 of the fee schedule) as it applies to EDGX or EDGA/EDGX combined volume. As mentioned above, the Exchange is now proposing to de-link the pricing structures of DECN (EDGA/EDGX) to eliminate pricing offers that are contingent on activity across both platforms.

For adding liquidity on EDGA, currently Members are charged \$0.0002 per share to add liquidity on EDGA unless the attributed MPID adds a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. Any attributed MPID meeting this minimum will not be charged to add liquidity on EDGA. The Exchange is proposing to delete the above paragraph in footnote 1 as the current charge of \$0.0002 per share to add liquidity on EDGA is no longer dependent on Members adding a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. In addition, the Exchange is proposing that any attributed MPID meeting this minimum will also be charged \$0.0002 per share to add liquidity on EDGA. Therefore, the text in footnote 1 has been deleted to reflect this change.

Currently, Members can qualify for a rebate of \$0.0032 per share for all liquidity posted on EDGX if they: (i) add or route at least 10,000,000 shares of average daily volume prior to 9:30 AM or after 4:00 PM (includes all flags except 6); and (ii) add a minimum of 75,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours. For EDGX, the Exchange proposes to amend this as follows: for Members adding volume in securities priced \$1 and over, they will receive a rebate of \$0.0031 per share for all liquidity posted on EDGX if they: (i) add or route at least 5,000,000 shares of average daily volume prior to 9:30 AM or after 4:00 PM (includes all flags except 6); and (ii) add a minimum of 50,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours (emphasis added). The new thresholds allow more Members to receive this rebate and 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 liquidity during pre- and post-trading hours. For all Members, including Members not meeting the above thresholds, the Exchange now proposes to rebate

\$0.0029 per share for adding liquidity (to EDGX) in securities on all Tapes. This replaces the Super Tier and Ultra Tier structure presently in place that is described above. Conforming amendments have been made to flags B, V, Y, 3 & 4 (“add liquidity” flags) to reflect this fee change.

For removing liquidity, the Exchange currently charges \$0.0028 per share for removing liquidity on EDGX for securities on all Tapes. The Exchange now proposes to charge \$0.0029 per share for removing liquidity on EDGX. The Exchange believes that this fee structure will enable it to compete effectively with other market centers. Conforming amendments have been made to the N, W, and 6 flags (“remove liquidity” flags) to reflect this fee change.

Finally, the Exchange proposes to amend the fee for EDGA orders routed to EDGX. Currently, the Exchange charges \$0.0028 per share and this event yields flag “I”. The Exchange is proposing to increase this fee to \$0.0029 per share on the EDGA platform. The Exchange believes that this rate change will enable it to maintain a competitive position with regards to other away market centers.

The changes discussed in this filing will become operative on January 1, 2010.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</sup> in particular, as 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, simplifying the rate structure for Members provides pricing incentives to market participants that route orders to DECN, allowing DECN to remain competitive. ISE notes that DECN operates in a highly

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<sup>8</sup> 15 U.S.C. 78f.

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 ISE also believes that the proposed rates are equitable in that they apply uniformly to all Members. Finally, to adjust DECN's pricing model to be more consistent with other exchanges (even though DECN is not an exchange), the Exchange desires to (i) de-link the pricing structures of DECN (EDGA/EDGX) to eliminate pricing offers that are contingent on activity across both platforms; and (ii) simplify its fee schedule in order to provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to EDGA/EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission).

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>9</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>10</sup> and Rule 19b-4(f)(2)<sup>11</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-2009-108 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-2009-108. 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>10</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-2009-108 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>12</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 19b-4(f)(2).

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