

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61825; File No. SR-ISE-2010-23)

April 1, 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 March 24, 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, 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) reflect pass through charges of other market centers; and (ii) make typographical and clarifying changes. 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>.

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

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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.

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.<sup>4</sup>

In SR-ISE-2009-57,<sup>5</sup> the Exchange adopted 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 was 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, the Exchange adopted a fee for ISE members of \$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.

First, because the Exchange proposes to pass through to Exchange members the actual transaction fees assessed by away markets, the Exchange is proposing to amend its fees schedule to reflect LavaFlow’s increase in fees. Effective March 1, 2010, LavaFlow increased its fees and

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<sup>4</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.

thresholds for meeting the above-described tier. Members that remove liquidity from LavaFlow if the Member's attributable MPID executes a minimum of 100,000 shares (instead of 50,000 shares currently) average daily volume using strategy ROLF (yielding Flag M) will now be charged \$0.0023 per share (instead of \$0.0022 per share currently). The Exchange is proposing to pass through this change to its members by reflecting it in footnote 6 on the fee schedule.

Secondly, effective April 1, 2010, the Nasdaq Stock Market updated its transaction fee schedule to introduce a unified removal rate (\$0.0030 per share executed) for all U.S. equities, across Tapes A, B, and C.<sup>6</sup> As a result of this proposed change, the Exchange is proposing to make a conforming change to delete footnote number 8 on the "2" flag and re-number it as footnote number 7 since the Nasdaq Stock Market no longer differentiates its removal rate across Tapes A, B, and C.

Finally, the Exchange proposes to make the following typographical and clarifying changes to the schedule: (i) on flag H, for EDGA, 0.001 is proposed to be changed to read "0.0010" to conform the numbering with the other fees on the schedule (emphasis added); (ii) in footnote number 6, delete an additional parenthesis at the end of the phrase "(yielding Flag U)".

The changes discussed in this filing will become operative on April 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>7</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>8</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. ISE notes that DECN operates in a

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<sup>5</sup> See Securities Exchange Act Release No. 60442 (August 5, 2009), 74 FR 40249 (August 11, 2009) (SR-ISE-2009-57).

<sup>6</sup> See Equity Trader Alert 2010-12 (effective April 1, 2010).

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

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. Finally, the Exchange 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. 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.

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

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<sup>8</sup> 15 U.S.C. 78f(b)(4).

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

<sup>10</sup> 17 CFR 19b-4(f)(2).

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-2010-23 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-2010-23. 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>11</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

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<sup>11</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.

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 10:00 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-2010-23 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>12</sup> 17 CFR 200.30-3(a)(12).