

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59724; File No. SR-ISE-2009-18)

April 7, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Lowering the Liquidity Rebate Amount That Direct Edge ECN Passes Through to Non-International Securities Exchange, LLC Members

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 April 2, 2009, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. The ISE filed Amendment No. 1 to the proposal on April 7, 2009.³ The Commission is publishing notice to solicit comments on the proposed rule change, as amended, from interested persons, and is approving the proposal, as amended, on an accelerated basis.

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

The ISE proposes to lower the liquidity rebate 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 website at <http://www.ise.com>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 supersedes and replaces the original filing in its entirety.

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 March 27, 2009, the ISE filed for immediate effectiveness a proposed rule change to amend DECN's fee schedule for ISE Members to lower the rebate that ISE Members receive for orders that add liquidity on EDGX in securities priced at or above \$1.00 that are reported to Tape B.⁴

DECN is a member of ISE as well as a facility of ISE. In its capacity as a member of ISE, DECN currently serves as an introducing broker for the non-ISE Member subscribers of DECN to access EDGX. Pursuant to SR-ISE-2009-17, DECN, as an ISE Member and introducing broker, receives rebates from DECN for transactions it executes on EDGX in its capacity as introducing broker for non-ISE Members. Since the rebate was lowered, DECN wishes to pass the lowered rebate through to non-ISE Member subscribers of DECN. As a result, the per share rebate that non-ISE member

⁴ See SR-ISE-2009-17.

subscribers receive will be the same as the rebate that ISE Members receive pursuant to SR-ISE-2009-17.

Finally, ISE is seeking accelerated approval of this proposed rule change, as well as a retroactive effective date of April 1, 2009. 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 equivalent amounts and that the imposition of such amounts will begin on the same April 1, 2009 start date.

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, this proposal will ensure that both ISE Members and Non-ISE Members (by virtue of the pass-through described above) will receive equivalent rebates.

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.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File No. SR-ISE-2009-18 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-2009-18. 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. Copies of such 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-2009-18 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

IV. Commission’s Findings and Order Granting Accelerated Approval of the Proposed Rule Change, as Amended

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ 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.

ISE recently amended DECN’s fee schedule to lower the rebate that DECN subscribers who also are ISE members receive for orders in Tape B securities priced at or above \$1 that add liquidity on EDGX.⁹ DECN receives this rebate for transactions it executes on EDGX in its capacity as an introducing broker for its non-ISE member subscribers.

⁷ In approving the proposal, the Commission has considered the proposal’s impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

⁸ 15 U.S.C. 78f(b)(4).

⁹ See Securities Exchange Act Release No. 59592 (April 2, 2009) (notice of filing and immediate effectiveness of File No. SR-ISE-2009-17) (the “Member Fee Filing”). The Member Fee Filing reduced the rebate for these orders from \$.0035 per share to \$.003 per share.

The current proposal, which will apply retroactively to April 1, 2009, will allow DECN to pass through the lowered rebate 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 a rebate amount for non-ISE member subscribers that is equivalent to the rebate amount established for ISE member subscribers in the Member Fee Filing.¹⁰

ISE has requested that the Commission find good cause for approving the proposal prior to the thirtieth day after the date of 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 lowered rebate amount established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebate amounts for ISE member and non-member subscribers. In addition, because the proposal will apply the reduced rebate retroactively to April 1, 2009, the reduced rebates for ISE member and non-member subscribers will have the same effective date, thereby promoting consistency in 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, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

¹⁰ See note 9, supra.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-ISE-2009-18), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).