

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60031; File No. SR-ISE-2009-29)

June 3, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating to Amending the Direct Edge ECN Fee Schedule to Expand the Applicability of the Super Tier Rebate to All Securities Priced at or Above \$1.00 and to Increase the Take Fee

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 May 29, 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 apply the Super Tier Rebates, as defined below, to all securities priced at or above \$1.00 that add liquidity on EDGX and to raise the fee charged to orders that remove liquidity on EDGX. All of the changes described herein are applicable to ISE Members.

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.

The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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. Currently, DECNs' fee schedule includes a per share rebate in securities reported to Tape A and Tape C of \$0.003 per share for ISE Members that add liquidity on EDGX if the ISE Member 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. The rebate described above is referred to as a "Super Tier Rebate" on the DECN fee schedule.

Currently, ISE Members that add liquidity in Tape A and Tape C securities and don't meet the Super Tier criteria, as set forth above, receive a rebate of \$0.0025 for such orders.

The Exchange is now proposing to expand the applicability of the aforementioned Super Tier Rebate during the month of June by eliminating the need to meet the "Super Tier" criteria described above for Tape A and Tape C securities and rebating \$0.003 to all orders that add liquidity on EDGX. The Exchange is increasing this rebate to maintain a competitive rate. This fee change will become operative on June 1, 2009.

In an effort to offset the cost of increasing the rebate for orders that add liquidity on EDGX, the Exchange is proposing to increase the fee for orders that remove liquidity on EDGX from \$0.0026 to \$0.0028. This fee change will become operative on June 1, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4),⁵ 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, expanding the applicability of the Super Tier Rebate and offering pricing incentives to market participants who route orders to DECN allows 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

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

competitive pricing structure designed to incentivize 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.

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 Act⁶ and Rule 19b-4(f)(2)⁷ 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.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 19b-4(f)(2).

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. Please include File No. SR-ISE-2009-29 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-2009-29. 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 a.m. and

3:00 p.m. 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-2009-29 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).