

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60232; File No. SR-ISE-2009-43)

July 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 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 30, 2009, the International Securities Exchange, LLC (the “Exchange” or “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 ISE. The ISE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 Members⁵ to: (1) reinstate the Super Tier Rebates, as defined below, that will apply to ISE Members whose transactions meet certain volume thresholds; (2) adopt new Ultra Tier Rebates, as defined below, that will apply to ISE Members whose transactions meet certain other volume

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 19b-4(f)(2).

⁵ References to ISE Members in this filing refer to DECEN Subscribers who are ISE Members.

thresholds; (3) adopt a new fee; and (4) make certain other clean-up changes. 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 web site at <http://www.ise.com> 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 Exchange 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

Purpose – DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA. During the month of June, DECN offered a promotion whereby ISE Members that add liquidity on EDGX receive a rebate of \$0.003 per share for all securities priced at or above \$1.00 ("June Promotion"). ISE Members that remove liquidity on EDGX are charged \$0.0028 per share for all securities priced at or above \$1.00 and orders sent to EDGX that subsequently get routed out are charged \$0.0029 per share for all securities priced at or above \$1.00.

The Exchange is now proposing to amend the DECN fee schedule to reinstate the volume thresholds applicable to the Super Tier Rebates that were in effect prior to the June Promotion in an effort to maintain a competitive rate. Accordingly, the Exchange proposes that, as of July 1, 2009, the DECN fee schedule will include a per share rebate in securities reported to Tape A and Tape C of \$0.003 for securities priced at or above \$1.00 when ISE Members 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. The 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 per share for securities that are priced at or above \$1.00.

The Exchange is proposing to make certain corresponding changes so that the changes described above are reflected throughout the DECN fee schedule. Such changes consist of: (1) deleting the boxed text which discusses the June Promotion; (2) deleting language out of footnote 1 that discusses the June Promotion; and (3) changing the rebates associated with flags “V” and “Y” from \$0.003 to \$0.0025 per share for securities priced at or above \$1.00.

Additionally, the Exchange is proposing to adopt a new Ultra Tier Rebate, as defined below, whereby ISE Members will be 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 liquidity required to qualify for criteria (i) above shall be adjusted in the event that Total Consolidated Volume (“TCV”), defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B and C securities, falls below an average of 10,000,000,000 shares per day (“Target TCV”) in the relevant calendar

month. In such circumstances, the adjusted amount of liquidity required to qualify under criteria (i) above shall be the percentage that actual reported TCV represents of Target TCV, multiplied by 100,000,000. The rebate described above is referred to as an “Ultra Tier Rebate” on the DECN fee schedule. The Exchange is adopting the Ultra Tier Rebate in an effort to increase volume on DECN.

The Exchange is also proposing to adopt a fee of \$0.0015 per share for securities priced at or above \$1.00 anytime the ROUQ or ROUC routing strategy is used on either EDGX or EDGA and this routing strategy results in an execution by an Enhanced Liquidity Provider (“ELP”). The ROUQ routing strategy enables ISE Members to interact with the order book and ELPs who elect to receive Indications of Interest (“IOIs”) from DECN. ROUC designated orders are multi-destination orders that sweep the order book and ELP destinations before any unfilled quantity is routed to low cost destinations. Accordingly, the Exchange is assessing this fee for ISE Members’ utilization of these services.

The Exchange is proposing to make certain clarifying changes to the DECN fee schedule. First, the Exchange is proposing to collapse two references to EDGA fees into a single line item because there is no need to break out the fees by Tape as the fees are consistent regardless of which Tape the securities are reported on. Second, the Exchange is adding clarifying text to specify that orders routed to Nasdaq are assessed a fee of \$0.003 per share for securities priced at or above \$1.00 and to specify that this charge not only applies to orders routed to Nasdaq from EDGA, but also applies to orders routed to Nasdaq from EDGX.

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

Basis – The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4),⁷ 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, reinstating the volume thresholds applicable to the Super Tier Rebates and offering an Ultra Tier Rebate provides 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 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.

⁶ 15 U.S.C. 78f.

⁷ 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)(A) of the Act⁸ and Rule 19b-4(f)(2)⁹ 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. Please include File Number SR-ISE-2009-43 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2009-43. 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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 19b-4(f)(2).

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 publicly available. All submissions should refer to File Number SR-ISE-2009-43 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Elizabeth M. Murphy
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).