

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60443; File No. SR-ISE-2009-58)

August 5, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Amounts that Direct Edge ECN, in Its Capacity as an Introducing Broker for Non-ISE Members, Passes Through to Such Non-ISE Members

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 July 31, 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 and II below, which Items have been prepared by ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

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

The Exchange proposes to modify the amounts 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 Web site at <http://www.ise.com> and at the Commission's Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 III 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 31, 2009, the ISE filed for immediate effectiveness a proposed rule change to: (i) amend DECN's fee schedule for ISE Members<sup>3</sup> to create a new tier, called the Full Sweep Tier, which provides a rebate for ISE Members that use ROUT orders that meet a volume threshold for amount of liquidity added on EDGX;<sup>4</sup> and (ii) adopt new fees and rebates.<sup>5</sup> The fee changes made pursuant to SR-ISE-2009-57 became operative on August 1, 2009.

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<sup>3</sup> References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

<sup>4</sup> In SR-ISE-2009-57, the Exchange created a new tier, effective August 1, 2009, called the Full Sweep Tier in which ISE Members are provided a \$0.0035 rebate per share for securities priced at or above \$1.00 when ISE Members add liquidity on EDGX if the attributed MPID use of the ROUT order type adds 50,000,000 shares or more of liquidity to EDGX on a daily basis, measured monthly. A ROUT order type that is sent to EDGX is an order type that does a full sweep of the EDGX book, before being exposed to Enhanced Liquidity Providers ("ELPs"). This order type will then route to away market centers if there is additional unexecuted liquidity. This order type is primarily used for agency orders, especially retail order flow. The rebate is designed to encourage the use of this particular type of liquidity.

<sup>5</sup> In SR-ISE-2009-57, the Exchange also adopted additional fees and rebates. First, 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

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 and EDGA. DECN, as an ISE Member and introducing broker, receives rebates and is assessed charges from DECN for transactions it executes on EDGX or EDGA in its capacity as introducing broker for non-ISE Members. Since the amounts of such rebates and charges were changed pursuant to SR-ISE-2009-57, DECN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive and are charged will be the same as the amounts that ISE Members receive and are charged.

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

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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. Finally, the Exchange established a rebate of \$0.0025 per share for securities priced at or above \$1.00 when ISE members add liquidity on EDGX via an EDGA-originated ROUC routing strategy. ROUC designated orders are multi-destination orders that sweep the internal order book and ELP destinations before any unfilled quantity is routed to low cost destinations. Such situation will yield liquidity Flag "P."

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>7</sup> 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 dues, fees and other charges imposed on ISE Members are equitably allocated to both ISE Members and non-ISE Members (by virtue of the pass-through described above).

### 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. 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

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2009-58 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-2009-58. 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 a.m. and 3 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-2009-58 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)<sup>9</sup> of the Act, 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.

As described more fully above, ISE recently amended DECN's fee schedule for ISE Members to, among other things, adopt a new Full Sweep Tier Rebate and adopt new fees and rebates in connection with the use of the ROLF and ROUC routing strategies.<sup>10</sup> The fee changes made pursuant to the Member Fee Filing became operative on August 1, 2009. DECN receives rebates and is charged fees for transactions it executes on EGDY or EDGA in its capacity as an introducing broker for its non-ISE member subscribers.

The current proposal, which will apply retroactively to August 1, 2009, will allow DECN to pass through the revised rebates and fees to the non-ISE member subscribers for which it acts an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide rebates and charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.<sup>11</sup>

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<sup>8</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> See File No. SR-ISE-2009-57 (the "Member Fee Filing").

<sup>11</sup> Id.

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

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-ISE-2009-58) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).