

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60913; File No. SR-ISE-2009-89)

November 2, 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 October 30, 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 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 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.

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 October 30, 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 adopt new fees and rebates and associated flags;<sup>4</sup> (ii)

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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-2009-88, the Exchange adopted additional fees and rebates to remain competitive with other market centers. First, the Exchange amended the fees on EDGA for adding and removing liquidity for securities priced \$1 and over. Effective November 1, 2009, the Exchange rebates \$0.0002 per share for removing liquidity on EDGA if the attributed MPID adds or routes a minimum average daily share volume, measured monthly, of 50,000 shares on either EDGX, EDGA, or EDGX and EDGA combined. As today, any attributed MPID not meeting the aforementioned minimum is charged \$0.0030 per share for removing liquidity from EDGA. In addition, the Exchange charges \$0.0002 per share for adding liquidity on EDGA unless the attributed MPID adds a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. If members meet or exceed such volume threshold, they are not charged to add liquidity on EDGA.

In addition, in SR-ISE-2009-88, the Exchange made conforming changes to the flags associated with these above-described fees. Flags associated with adding liquidity on EDGA were updated to reflect the \$0.0002 charge. These flags include B, V, and Y. The fees associated with Flags 3 and 4, discussed in more detail below, are also consistent with this fee structure. Flags associated with removing liquidity on EDGA were updated to reflect the \$0.0002 rebate. These flags include N and W. Flag 6, discussed in more detail below, is also consistent with this fee structure.

Furthermore, in SR-ISE-2009-88, the Exchange amended the fee on EDGX for adding liquidity on Tape B for securities priced \$1 and over. The Exchange rebates \$0.0025 per share (the same as currently exists for Tapes A & C). A conforming change was made to Flag B, which indicates liquidity added to EDGX's book.

Finally, the Exchange amended the fees on both EDGX and EDGA for securities priced less than \$1. For such securities, the Exchange amended the fees for routing to be 0.30%

amend the criteria for meeting the Ultra Tier;<sup>5</sup> (iii) amend the applicability of the Super Tier

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of the total dollar value of the transaction instead of 0.29% of the dollar value of the transaction.

The Exchange believes that the above-described fee changes enable DECN to compete effectively with other market centers.

<sup>5</sup> On July 1, 2009, the Exchange adopted a new Ultra Tier Rebate whereby ISE Members are 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 on EDGX, so long as added liquidity on EDGX is at least 20,000,000 shares greater than the previous calendar month. The rebate described above is referred to as an “Ultra Tier Rebate” on the DECN fee schedule. See Securities Exchange Act Release No. 60232 (July 2, 2009), 74 FR 33309 (July 10, 2009)(SR-ISE-2009-43).

Per SR-ISE-2009-68, the Exchange amended the criteria for meeting the Ultra Tier if ISE Members (i) add or route at least 10,000,000 shares of average daily volume prior to 9:30 AM or after 4:00 PM (includes all flags except N and W) and add a minimum of 75,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours. See Securities Exchange Act Release No. 60769 (October 2, 2009), 74 FR 51903 (October 8, 2009)(SR-ISE-2009-68).

In SR-ISE-2009-88, the Exchange also added an additional way to qualify for the Ultra Tier. Members can also qualify for a \$0.0032 rebate per share for all liquidity posted on EDGX if the attributed MPID on a daily basis, measured monthly, adds a minimum of 50,000,000 shares per day to EDGX so long as the added liquidity on EDGX is at least 50,000,000 shares greater than the previous calendar month.

The Exchange believes that this additional way to meet the Ultra Tier (a tier-based rate) incents Members to interact with order flow on DECN. This discount rate arises in part from reduced administrative costs associated with certain volume levels.

In SR-ISE-2009-88, the Exchange added liquidity flags to reflect adding and removing liquidity during pre- and post-trading hours. When members add liquidity on Tapes A & C during the pre- and post-trading hours, they are rebated \$0.0025 per share on EDGX and are charged \$0.0002 per share on EDGA and this situation yields Flag 3. When members add liquidity during the pre and post-trading hours on Tape B, they are rebated \$0.0025 per share on EDGX and charged \$0.0002 per share on EDGA and this situation yields Flag 4. When members cross with themselves (internalization) during the pre and post-trading hours, they are charged \$0.000025 per share on EDGX and are not charged on EDGA. This situation yields flag 5. When members remove liquidity from any Tape during the pre and post-trading hours, they are charged \$0.0028 per share on EDGX and are rebated \$0.0002 on EDGA. This situation yields flag 6. Finally, for members whose orders are routed from EDGA or EDGX during the pre- and post- trading hours, they are charged \$0.0030 per share. This situation yields flag 7. In addition, the rebate of \$0.0002 for removing liquidity on EDGA and charge of \$0.0002 for adding liquidity on

rebate to Tape B securities;<sup>6</sup> and (iv) make typographical changes to the fee schedule.<sup>7</sup> The fee changes made pursuant to SR-ISE-2009-88 became operative on November 1, 2009.

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-2009-88, 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 an effective date of November 1, 2009. ISE represents that this proposal will ensure that both ISE Members and

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EDGA is described in more detail below. The Exchange believes that this fee structure will enable it to compete effectively with other market centers that have recently introduced such pricing.

<sup>6</sup> Additionally, in SR-ISE-2009-88, the Exchange modified the Super Tier rebate to include transactions in Tape B securities as well. Previously, the Super Tier only applied to Tapes A & C. As a result of the amendment, Members who execute transactions in Tape B securities also qualify for the Super Tier and are provided a \$0.0030 rebate per share for liquidity added on EDGX if the attributed MPID 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.

<sup>7</sup> In SR-ISE-2009-88, the Exchange made typographical changes to the fee schedule to clarify that Flags M, V, and Y are rebates for adding liquidity. For Flag M, parentheses were added to indicate that \$0.0024 rebate per share is both on EDGA and EDGX. For Flags V and Y, parentheses were added to indicate that the \$0.0025 rebate per share is on EDGX.

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 November 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,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</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:

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<sup>8</sup> 15 U.S.C. 78f.

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

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 No. SR-ISE-2009-89 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-2009-89. 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-2009-89 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>10</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)<sup>11</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 new fees, rebates and associated flags for adding and removing liquidity during pre and post hours trading, add an additional method to qualify for the Ultra Tier rebate, modify the Super Tier rebate to include transactions in Tape B securities, adopt a charge for adding liquidity on EDGA unless certain volume thresholds are met, revise the fees for adding liquidity on EDGX and EDGA and made conforming changes to the flags associated with these rebates and fees.<sup>12</sup> The fee changes made pursuant to the Member Fee Filing became operative on November 1, 2009. DECN receives rebates and is charged fees for transactions it executes on EDGX or EDGA in its capacity as an introducing broker for its non-ISE member subscribers.

The current proposal, which will apply retroactively to November 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

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<sup>10</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> See File No. SR-ISE-2009-88 (the "Member Fee Filing").

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>13</sup>

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 November 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.

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<sup>13</sup>

Id.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-ISE-2009-89) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).