

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61101; File No. SR-ISE-2009-99)

December 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 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 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, 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 (i) amend its fee schedule to reflect pass through charges of other market centers and (ii) make technical changes to the fee schedule. All of the changes described herein are applicable to ISE Members.

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 website at <http://www.ise.com>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

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 October 1, 2009,⁴ the Exchange added new fee categories for the INET order type. When a member routes to Nasdaq using the INET order type and removes liquidity on Tapes A or C, the member incurs a fee of \$0.0030 on either EDGA or EDGX. Such situation yields Flag “L”. The INET order type sweeps the EDGA or EDGX book, and routes the remainder to Nasdaq. If the order is marketable, it removes liquidity from the EDGA or EDGX book, as applicable, first. If the order is non-marketable, the order posts on Nasdaq. With regards to a Member’s use of the INET order type for Tapes A or C securities, Members routing an ADV: (i) less than 5,000,000 shares are currently charged \$0.0030 per share, as described in the schedule; (ii) equal to or greater than 5,000,000 shares but less than 20,000,000 shares are currently charged \$0.0027 per share; (iii) equal to or greater than 20,000,000 shares but less than 30,000,001 shares are currently charged \$0.0026 per share; and (iv) equal to or greater than 30,000,001 shares are currently charged \$0.0025 per share. The rates, in all cases, are calculated for shares removed from Nasdaq. The

⁴ See Securities Exchange Act Release No. 60769 (October 2, 2009), 74 FR 51903 (October 8, 2009) (SR-ISE-2009-68).

Exchange believes that these tier-based rates incent Members to sweep the EDGA or EDGX book first and then offer a discounted rate to Nasdaq's rates if the remainder of the order is routed to Nasdaq. These discounted rates arise in part from reduced administrative costs associated with certain volume levels.

The Exchange proposes to amend these fees in order to reflect changes to the actual transaction fees assessed by away markets. Specifically, the Exchange is proposing to amend its fee schedule to reflect changes to Nasdaq's best removal tier rate. For example, on November 1, 2009, the best removal tier rate increased on Nasdaq from \$0.0027 per share executed to \$0.0028 per share executed for Tape A & C securities.⁵ The Exchange now proposes to amend its fee schedule so that when Nasdaq's best removal tier rate changes, EDGA and EDGX's fees change as well, in lock step. The new language is proposed to read as follows:

Subscribers routing an average daily volume ("ADV"): (i) less than 5,000,000 shares will be charged \$0.0030 per share, as described in the schedule; (ii) equal to or greater than 5,000,000 shares but less than 20,000,000 shares will be charged Nasdaq's best removal tier rate per share; (iii) equal to or greater than 20,000,000 shares but less than 30,000,001 shares will be charged Nasdaq's best removal tier rate - \$0.0001 per share; and (iv) equal to or greater than 30,000,001 shares will be charged Nasdaq's best removal tier rate - \$0.0002 per share. The rates, in all cases, are calculated for shares removed from Nasdaq. (emphasis added)

For the month of December this would equate to \$0.0028 per share for (ii), above, \$0.0027 per share for (iii), above, and \$0.0026 per share for (iv), as described above.

⁵ See Securities Exchange Act Release No. 60959 (November 6, 2009), 74 FR 58672 (November 13, 2009)(SR-NASDAQ-2009-096).

In addition, the Exchange proposes to make technical changes to the fee schedule. Effective November 1, 2009,⁶ the Exchange amended the meaning of several flags. In particular, the N and W flags are no longer used to reflect activity outside of regular market hours. The Exchange adopted flags 3-7 to reflect pre- and post-market activity. Therefore, the Exchange proposes to correct a reference in footnote 1 to the fee schedule to reflect this change. The new language is proposed to read as follows:

In addition, subscribers can also qualify for a rebate of \$0.0032 per share for all liquidity posted on EDGX if they 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 6) 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. (emphasis added)

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4),⁸ 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, providing tier-based rates for Members provide pricing incentives to market participants that route orders to DECN, allowing DECN to remain competitive. This tier-based rate arises in part from reduced administrative costs associated with certain volume levels. ISE notes that DECN operates in a highly competitive market in which market participants can readily direct order flow to

⁶ See Securities Exchange Act Release No. 60914 (November 2, 2009), 74 FR 57726 (November 9, 2009)(SR-ISE-2009-88).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

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 incent 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. Additionally, ISE believes that the proposed rates are equitable in that they apply uniformly to all Members.

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 Act⁹ and Rule 19b-4(f)(2)¹⁰ 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.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 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 Number SR-ISE-2009-99 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-2009-99. 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 am and 3:00 pm. Copies of the 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-2009-99 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).