

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62051; File No. SR-ISE-2010-38)

May 6, 2010

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 April 30, 2010, 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 the self-regulatory organization. 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.<sup>3</sup> The changes made pursuant to SR-ISE-2010-37 became operative on May 1, 2010. On April 30, 2010, the ISE filed for immediate effectiveness a proposed rule change to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members<sup>4</sup> to: (i) change the rates for routing in securities priced less than \$1.00 to certain away market centers;<sup>5</sup> (ii) reintroduce the rebate on securities

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<sup>3</sup> This fee filing relates to the trading facility operated by ISE and not EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge ECN LLC (EDGA and EDGX) will cease to operate in its capacity as an electronic communications network following the commencement of operations of EDGA Exchange, Inc. and EDGX Exchange, Inc. as national securities exchanges.

<sup>4</sup> References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

<sup>5</sup> In SR-ISE-2010-37, the Exchange amended the routing rates to certain away market centers associated with the removal of liquidity from EDGA and EDGX in securities priced less than \$1.00. For orders in securities priced less than \$1.00 that are routed to Nasdaq BX in Tapes A & C securities and that remove liquidity, orders were charged the Exchange's standard routing charge for securities less than \$1.00 (0.30% of the total dollar value of the transaction, both on EDGA and EDGX). As a result of a decrease in fees by Nasdaq OMX when removing liquidity in securities priced less than \$1.00, the Exchange amended its fee schedule in order to charge 0.10% of the total dollar value of the transaction (instead of 0.30%) when orders were routed to Nasdaq BX in Tapes A & C securities and removed liquidity. This has been indicated by footnote number 3 on the existing "C" flag. A conforming amendment has also been made to the fee schedule to append footnote number 3 to indicate an exception to the standard rate (0.30% of dollar value) for routing liquidity in securities priced less than \$1.00. See Nasdaq OMX Equity Trader Alert, #2010-27 (April 19, 2010) ("Firms will be charged 0.10% (i.e., 10 basis points) of the total dollar value of the transaction when removing liquidity in stocks with prices below \$1.00").

priced less than \$1.00 that add liquidity to EDGX;<sup>6</sup> (iii) increase the rebate for Members meeting the Ultra Tier;<sup>7</sup> and (iv) pass through rebates/fees from other market centers.<sup>8</sup> The changes

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Additionally, in SR-ISE-2010-37, the Exchange amended its fee schedule to charge 0.20% of the total dollar value of the transaction when orders are routed to Nasdaq and remove liquidity in securities on all Tapes or orders are routed to Nasdaq using the INET order type and remove liquidity in securities on all Tapes. (The INET order type sweeps the EDGA or EDGX book and removes liquidity from Nasdaq, if the order is marketable, or posts on Nasdaq, if the order is non-marketable.) This has been indicated by footnote number 3 being appended to the existing “J,” “L,” and “2” flags. A conforming amendment has also been made to the fee schedule to append footnote number 3 to indicate an exception to the standard rate (0.30% of dollar value) for routing liquidity in securities priced less than \$1.00.

The Exchange believes that this rate change will seek to incentivize the removal of liquidity from EDGA and EDGX in securities priced less than \$1.00 that are routed to certain away market centers.

<sup>6</sup> There was no rebate for adding liquidity on EDGX in securities priced less than \$1.00. In SR-ISE-2010-37, the Exchange re-introduced a rebate of \$0.00003 per share for orders that add liquidity to EDGX in securities priced less than \$1.00. The Exchange believes that this rebate was appropriate as it represented 30% of the minimum price increment for securities priced less than \$1.00 (\$0.0001) and effectively aligned the rebate with access fee caps under Regulation NMS. The Access Rule of Regulation NMS limits the fees any trading center can charge, or allow to be charged, for accessing its protected quotations, both displayed and reserve size, to no more than \$0.003 per share. See Rule 610(c) of Regulation NMS, Securities and Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>7</sup> The Exchange’s fee schedule provided Members can qualify for a rebate of \$0.0031 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 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 50,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours. In SR-ISE-2010-37, effective May 1, 2010, the Exchange increased this rebate to \$0.0032 per share to further incentivize posting liquidity to EDGX. In addition, the higher rebate also resulted, in part, from lower administrative costs associated with higher volume.

<sup>8</sup> The NYSE recently announced changes, effective May 2010, that it will increase the fee for removing liquidity in Tape A securities to \$0.0021 per share (from 0.0018 per share) and increase the rebate for trading in Tape A securities to \$0.0013 per share (from \$0.0010 per share). In SR-ISE-2010-37, Flag D, which indicates orders that are routed or re-routed to NYSE, and remove liquidity, was amended to reflect the charge of \$0.0021 per share. A conforming amendment was also made to Flag F (routed to NYSE, adds liquidity) to increase the rebate to \$0.0013 per share. Footnote 3 was amended to reflect NYSE’s fee change for trading in securities with a per share price below \$1.00 (from \$0.0018 per share to \$0.0021 per share). In addition, the “Q” flag, which denotes an

made pursuant to SR-ISE-2010-37 became operative on May 1, 2010.

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-2010-37, 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 May 1, 2010. 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 May 1, 2010 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>9</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>10</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

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order type (ROUC) that routes to the NYSE, was increased from \$0.0015 per share to \$0.0018 per share on EDGA and EDGX to reflect the increase.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2010-38 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-2010-38. 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,<sup>11</sup> 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 Web site viewing and printing 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 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-2010-38 and should be submitted on or before [insert date 21 days after 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>12</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)<sup>13</sup> of the Act, which requires that the rules of a national securities exchange provide for

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<sup>11</sup> The text of the proposed rule change is available on ISE's Web site at <http://www.ise.com>, on the Commission's Web site at <http://www.sec.gov>, at ISE, and at the Commission's Public Reference Room.

<sup>12</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

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 pursuant to SR-ISE-2010-37 (the "Member Fee Filing"). The fee changes made pursuant to the Member Fee Filing became operative on May 1, 2010. DECN receives rebates and is charged fees for transactions it executes on EGD<sub>X</sub> or EDGA in its capacity as an introducing broker for its non-ISE member subscribers. The current proposal, which will apply retroactively to May 1, 2010, 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>14</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 May 1, 2010, 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>14</sup> Id.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-ISE-2010-38) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Florence E. Harmon  
Deputy Secretary

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).