

participants to submit orders priced less than \$1.00 per share in a minimum pricing increment of \$0.0001 for execution. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will provide another competitive venue for execution of orders priced in sub-penny increments of \$0.0001 for securities priced below \$1.00 per share.<sup>16</sup> For these reasons, the Commission designates that the proposed rule change become operative upon filing.

At any time within 60 days of the filing of the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-107 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-NYSE-2009-107. 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 Exchange. 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-NYSE-2009-107 and should be submitted on or before November 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60914; File No. SR-ISE-2009-88]

### 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

November 2, 2009.

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, 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 Members<sup>3</sup> to (i) adopt new fees and rebates and associated flags; (ii) amend the criteria for meeting the Ultra Tier; (iii) amend the applicability of the Super Tier rebate to Tape B securities; and (iv) make typographical 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 Web site 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 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 July 1, 2009,<sup>4</sup> 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 DECEN fee schedule.

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

<sup>4</sup> See Securities Exchange Act Release No. 60232 (July 2, 2009), 74 FR 33309 (July 10, 2009) (SR-ISE-2009-43).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

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

On October 1, 2009,<sup>5</sup> the Exchange amended the criteria for meeting this tier by allowing ISE Members to receive 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 posts 1% of the total consolidated volume ("TCV") in average daily volume ("ADV"). TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B, and C securities. In addition, members can also qualify for a rebate of \$0.0032 per share for all liquidity posted on EDGX if they (i) add or route at least 10,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (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.

The Exchange is now proposing to add 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 will be rebated \$0.0025 per share on EDGX and charged \$0.0002 per share on EDGA and this situation will yield Flag 3. When members add liquidity during the pre and post-trading hours on Tape B, they will be rebated \$0.0025 per share on EDGX and charged \$0.0002 per share on EDGA and this situation will yield Flag 4. When members cross with themselves (internalization) during the pre and post-trading hours, they will be charged \$0.000025 per share on EDGX and will not be charged on EDGA. This situation will yield flag 5. When members remove liquidity from any Tape during the pre- and post-trading hours, they will be charged \$0.0028 per share on EDGX and be rebated \$0.0002 on EDGA. This situation will yield flag 6. Finally, for members whose orders are routed from EDGA or EDGX during the pre- and post-trading hours, they will be charged \$0.0030 per share. This situation will yield flag 7. In addition, the rebate of \$0.0002 for removing liquidity on EDGA and charge of \$0.0002 for adding liquidity on EDGA is described in more detail below. As discussed below, the Exchange believes that this fee structure will enable it to compete effectively with other market centers that have recently introduced such pricing.

The Exchange is also now proposing to add 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) will incent Members to interact with order flow on DECN. This discount rate arises in part from reduced administrative costs associated with certain volume levels.

As discussed above, the Exchange also proposes to adopt additional fees and rebates to remain competitive with other market centers. First, the Exchange proposes to amend the fees on EDGA for adding and removing liquidity for securities priced \$1 and over. Effective November 1, 2009, the Exchange proposes to rebate \$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 proposes to charge \$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 will not be charged to add liquidity on EDGA.

In addition, the Exchange proposes to make conforming changes to the flags associated with these above-described fees. Flags associated with adding liquidity on EDGA are proposed to be 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 above, are also consistent with this fee structure. Flags associated with removing liquidity on EDGA are also proposed to be updated to reflect the \$0.0002 rebate. These flags include N and W. Flag 6, discussed in more detail above, is also consistent with this fee structure.

Furthermore, the Exchange proposes to amend the fee on EDGX for adding liquidity on Tape B for securities priced \$1 and over. The Exchange proposes to rebate \$0.0025 per share (the same as currently exists for Tapes A & C). A conforming change is proposed to be made to Flag B, which indicates liquidity added to EDGX's book.

Additionally, the Exchange proposes to modify the Super Tier rebate to

include transactions in Tape B securities as well. Currently, the Super Tier only applies to Tapes A & C. As a result of this proposed amendment, Members who execute transactions in Tape B securities will also qualify for the Super Tier and will be 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.

The Exchange proposes to amend the fees on both EDGX and EDGA for securities priced less than \$1. For such securities, the Exchange proposes to amend the fees for routing to be 0.30% 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 will enable DECN to compete effectively with other market centers.

Finally, the Exchange proposes to make typographical changes to the fee schedule to clarify that Flags M, V, and Y are rebates for adding liquidity. For Flag M, parentheses have been added to indicate that \$0.0024 rebate per share is both on EDGA and EDGX. For Flags V and Y, parentheses have been added to indicate that the \$0.0025 rebate per share is on EDGX.

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

## 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, adopting an additional rebate and 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

<sup>5</sup> See Securities Exchange Act Release No. 60769 (October 2, 2009) 74 FR 51903 (October 8, 2009) (SR-ISE-2009-68).

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

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

levels. 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 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 inverse pricing structure on EDGA, rebates and new flags enable the Exchange to compete effectively with other market centers. The ISE also 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 Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2009-88 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-2009-88. 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 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-2009-88 and should be submitted on or before November 30, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-26880 Filed 11-6-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60913; File No. SR-ISE-2009-89]

### 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

November 2, 2009.

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 Web site 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 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.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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