

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 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 available publicly. All submissions should refer to File Number SR-CHX-2010-03 and should be submitted on or before March 3, 2010.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61490; File No. SR-ISE-2010-10]

### 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

February 4, 2010.

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 January 29, 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, 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 amend its fee schedule by (i) re-introducing a rebate; (ii) adding a fee for stocks priced less than \$1 that remove liquidity on EDGA; (iii) eliminating certain tables on the fee schedule and (iv) making typographical and clarifying 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.

Re-introduction of Ultra Tier Rebate

In SR-ISE-2009-68,<sup>4</sup> the Exchange amended the criteria for meeting the Ultra 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. For competitive reasons, the Exchange

is now seeking to re-introduce an Ultra Tier rebate of \$0.0031 per share.

The Ultra Tier rebate (\$0.0031 per share), which is a higher rebate than the next best rebate (\$0.0029 per share) for adding liquidity on EDGX, is also more difficult to reach, as a higher volume threshold is required based on recent TCV figures. For example, 1% of the average TCV for January 2010 (8.9 billion) was approximately 89 million shares. This threshold far exceeds the criteria (no minimum share volume requirement) to meet the next best rebate of \$0.0029 per share. In addition, the higher rebate also results in part from lower administrative costs associated with higher volume.

##### Additional Changes to the Fee Schedule

Effective January 1, 2010,<sup>5</sup> DECN adjusted its pricing model to be more consistent with other exchanges (even though DECN is not an exchange),<sup>6</sup> by de-linking the pricing structures of DECN to eliminate pricing offers that are contingent on activity across both platforms. Secondly, the Exchange simplified its fee schedule in order to provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to the EDGA and EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission). The Exchange believes that these same goals are also advanced for the most part in this filing, which proposes technical and clarifying changes to DECN's fee schedule.

To effectuate the foregoing, the Exchange deleted certain charges in footnote 1 of the fee schedule, including one whereby ISE Members were charged \$0.0002 per share to add liquidity on EDGA unless the attributed MPID added a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. Prior to January 1, 2010, any attributed MPID meeting the aforementioned minimum was not charged to add liquidity on EDGA. Since this charge was deleted from footnote 1, the Exchange proposes

<sup>5</sup> See Securities Exchange Act Release No. 61289 (January 5, 2010), 75 FR 1674 (January 12, 2010) (SR-ISE-2009-108).

<sup>6</sup> On May 7, 2009, each of EDGA Exchange, Inc. and EDGX Exchange, Inc. (the "EDGA and EDGX Exchanges") filed their respective Form 1 applications to register as a national securities exchange ("Form 1") pursuant to Section 6 of the Securities Exchange Act of 1934. On July 30, 2009, the Exchanges filed Amendment No. 1 to the Form 1 Application. On September 17, 2009, the Form 1 was published in the **Federal Register** for notice and comment. See Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009).

<sup>11</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.

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

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

to delete the corresponding footnote 1 from flags B, V, Y, 3, and 4 from the EDGA column as this footnote no longer applies.

In order to further simplify its fee schedule for Members, the Exchange proposes to delete the table on the fee schedule entitled "Fees per Share for Special Order Types" as the Exchange believes that the information on this schedule is repetitive of the information in the "liquidity flags and associated fees" table below it. As a result of this proposed deletion, the Exchange proposes to relocate footnote numbers 4 and 5. Footnote 4 is proposed to be relocated to "Flag E" and added to "Flag 5" to clarify it. Footnote 5 is proposed to be relocated to "Flag O." These are the corresponding areas where these references belong.

The Exchange proposes to re-word the first sentence in footnote 1 to clarify that adding can include placing hidden orders.

In addition, the Exchange proposes to add a fee to its schedule to provide that stocks priced less than \$1 will be charged 0.20% of the dollar value if they do not meet the minimum average daily share volume of 50,000 shares on EDGA to qualify for the removal rate. A conforming footnote 1 is proposed to be added in the first table on the fee schedule (next to the word "Free") for removing liquidity in stocks less than \$1.00 on EDGA.

In SR-ISE-2009-108,<sup>7</sup> for securities priced less than \$1, the Exchange changed the fee for adding liquidity on EDGX from free to a rebate of 0.15% of the dollar value of the transaction. The Exchange proposes to correct a typographical error on its current schedule by adding parenthesis around the "0.15% of dollar value" to clarify that this is a rebate, and *not* a charge, for adding liquidity on EDGX in securities priced less than \$1.

For Flag P, the Exchange proposes to correct a typographical error on the schedule by inverting the columns that are currently displayed. For EDGX, flag P should read "N/A" and for EDGA it should read a rebate of \$0.0025 per share (*i.e.*, (0.0025)).

The Exchange proposes to clarify Footnote 3. The second sentence of this footnote states that the "rebate for adding liquidity on the NYSE of \$0.0010 per share." This information is already conveyed in Flag F and is proposed to be deleted in order to simplify and clarify the fee schedule. The first sentence of footnote 3 is also proposed to be deleted as it is repetitive of the

amended third sentence in footnote 3 ("stocks prices below \$1.00 on the NYSE are charged \$0.0018 per share when removing liquidity.") As a result, on Flag J, footnote 3 is proposed to be deleted as the reference no longer applies. However, footnote 3 is proposed to be relocated to Flag D in order to further clarify it.

The changes discussed in this filing will become operative on February 1, 2010.

## 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, as 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, simplifying the rate structure for Members provides pricing incentives to market participants that route orders to DECN, allowing DECN to remain competitive. 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. The proposed re-introduction of an Ultra Tier rebate also provides an incentive to Members who add significant order flow to EDGX. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and provide higher rebates for higher volume thresholds, resulting from lower administrative costs. 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. The ISE also believes that the proposed rates are equitable in that they apply uniformly to all Members. Finally, to adjust DECN's pricing model to be more consistent with other exchanges (even though DECN is not an exchange), the Exchange desires to simplify part of its fee schedule in order to provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to EDGA/EDGX Exchanges (assuming their

respective Form 1 applications are approved by the Commission).

## 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>10</sup> and Rule 19b-4(f)(2)<sup>11</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-2010-10 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-2010-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

<sup>7</sup> See Securities Exchange Act Release No. 61289 (January 5, 2010), 75 FR 1674 (January 12, 2010).

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

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 19b-4(f)(2).

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>12</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 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-2010-10 and should be submitted on or before March 3, 2010.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61497; File No. SR-FINRA-2009-073]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Hearing Location Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes

February 4, 2010.

#### I. Introduction

On October 28, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange

Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Rules 12213(a) and 13313(a) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code"), respectively, to expand the criteria for selecting a hearing location for an arbitration proceeding. The proposed rule change was published for comment in the **Federal Register** on December 30, 2009.<sup>3</sup> The Commission received three comment letters, all of which supported the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

##### *Hearing Location Selection Under the Customer Code*

Currently, Rule 12213(a) of the Customer Code states that generally, the Director of FINRA Dispute Resolution ("Director") will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute. FINRA has determined that its policy concerning selection of a hearing location under the Customer Code may be broader than the rule describes.

Under the current rule in the Customer Code, for example, if a customer in an arbitration proceeding lives in Hoboken, New Jersey, the Director will select the New York City hearing location, because this hearing location is closer to the customer's residence, Hoboken,<sup>5</sup> than FINRA's Newark, New Jersey hearing location.

There have been instances, however, in which the Director has granted customers' requests to select a hearing location in their state of residence at the time of the events giving rise to the dispute, even though the in-state hearing location may not be the closest hearing location. Thus, in the example above, if the customer requests the Newark, New Jersey hearing location, the Director generally will grant the request, even though the closest hearing

location is the New York City location. The Director typically attempts to honor such requests as a convenience to public customers.

FINRA is proposing, therefore, to amend Rule 12213(a) of the Customer Code to add this criterion for selecting a hearing location. The proposed amendment to the rule would state that the Director will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute, unless the hearing location closest to the customer's residence is in a different state. In that case, the customer may request a hearing location in the customer's state of residence at the time of the events giving rise to the dispute.

Under the proposal, the Director would continue to select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute. However, the Director would honor a customer's request for a different hearing location in the customer's state of residence.<sup>6</sup> FINRA believes the proposal is customer-friendly because it gives customers more control over the arbitration process, by providing them with a choice of hearing locations.

##### *Hearing Location Selection Under the Industry Code*

Rule 13213(a) of the Industry Code states, in relevant part, that in cases involving an associated person, the Director will generally select the hearing location closest to where the associated person was employed at the time of the events giving rise to the dispute. FINRA has not received requests from associated persons for different hearing locations, other than the closest hearing location under the current rule. However, FINRA believes that associated persons also should have the option to select a hearing location in their state of employment at the time of the events giving rise to the dispute, if the closest hearing location to their employment is in a different state.

Thus, FINRA is proposing to amend Rule 13213(a) of the Industry Code in two ways. First, FINRA would broaden the criteria for selecting the appropriate hearing location by referring to the time

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

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

<sup>3</sup> 74 FR 69184 (Dec. 30, 2009).

<sup>4</sup> See letters from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated December 29, 2009; Scott R. Shewan, President, Public Investors Arbitration Bar Association ("PIABA"), dated January 19, 2010; and Jill I. Gross, Director, The Investors Rights Clinic at Pace University Law School, dated January 20, 2010.

<sup>5</sup> Hoboken, New Jersey is less than a mile by ferry across the Hudson River from FINRA's New York City hearing location.

<sup>6</sup> If the customer requests a different hearing location other than the location closest to the customer's residence at the time of the events giving rise to the dispute and makes the request before the arbitrator or arbitrators are selected, the Director will grant the request. If the customer requests a different hearing location other than the location closest to the customer's residence at the time of the events giving rise to the dispute and makes the request after the arbitrator or arbitrators are selected, the customer must submit the request to the arbitrator or panel.

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