

advisory. Each Agency alone will make any determinations of action to be taken and policy to be expressed with respect to matters within their respective authority as to which the Committee provides advice or makes recommendations.

The Chairmen of the Agencies affirm that the establishment of the Committee is necessary and in the public interest.

Pursuant to 41 CFR 102-3.65(b), the Secretariat has found good cause for approving the establishment of this advisory committee prior to the fifteenth day after publication of notice of establishment in the **Federal Register** so that the Committee members can quickly begin to identify emerging regulatory issues and their potential impact on investors and the securities markets. The Committee will lend the CFTC and SEC expertise that ranges across the securities and futures markets.

By the Securities and Exchange Commission.

Dated: May 10, 2010.

**Elizabeth M. Murphy**,  
*Committee Management Officer.*

By the Commodity Futures Trading Commission.

**Martin White**,  
*Committee Management Officer.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62050; File No. SR-ISE-2010-37]

### 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

May 6, 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 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, 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) change the rates for routing in securities priced less than \$1.00 to certain away market centers; (ii) reintroduce the rebate on securities priced less than \$1.00 that add liquidity to EDGX; (iii) pass through rebates/fees from other market centers; and (iv) increase the rebate for Members meeting the Ultra Tier. 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.<sup>4</sup>

The Exchange is proposing to amend 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. Currently, 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 are charged the Exchange's standard routing charge for securities less than \$1.00 (0.30% of the total dollar value of the transaction,

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

<sup>4</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.

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,<sup>5</sup> the Exchange proposes to amend its fee schedule in order to charge 0.10% of the total dollar value of the transaction (instead of 0.30%) when orders are routed to Nasdaq BX in Tapes A & C securities and remove liquidity. This is proposed to be 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.

Additionally, the Exchange proposes 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<sup>6</sup> order type and remove liquidity in securities on all Tapes. This is proposed to be indicated by footnote number 3 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.

##### Re-Introduction of Rebate

Currently, there is no rebate for adding liquidity on EDGX in securities priced less than \$1.00. The Exchange is proposing to re-introduce 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 is appropriate as it represents 30% of the minimum price increment for securities priced less than \$1.00 (\$0.0001) and effectively aligns the rebate with access fee caps under Regulation NMS.<sup>7</sup>

<sup>5</sup> 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").

<sup>6</sup> 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.

<sup>7</sup> 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.

Continued

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

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

### *Amendment to Ultra-Tier Rebate*

The Exchange's fee schedule currently provides that 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 a.m. or after 4 p.m. (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. Effective May 1, 2010, the Exchange is proposing to increase this rebate to \$0.0032 per share to further incentivize posting liquidity to EDGX. In addition, the higher rebate also results, in part, from lower administrative costs associated with higher volume.

### *Pass-through of NYSE Fees/Rebates*

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). Flag D, which indicates orders that are routed or re-routed to NYSE, and remove liquidity, will be amended to reflect the charge of \$0.0021 per share. A conforming amendment is also proposed to Flag F (routed to NYSE, adds liquidity) to increase the rebate to \$0.0013 per share. Footnote 3 is proposed to be 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 order type (ROUC) that routes to the NYSE, is proposed to be increased from \$0.0015 per share to \$0.0018 per share on EDGA and EDGX to reflect the increase.

The changes discussed in this filing will become operative on May 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. 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 Exchange believes that the proposed amendment to the Ultra-Tier rebate is equitable in that it applies uniformly to all Members and provides a higher rebate for higher volume thresholds, resulting from lower administrative costs. Finally, the Exchange believes that the proposed rates further the objectives of Regulation NMS by promoting competition and granting fair and equal access to all exchange participants. 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.

### *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-2010-37 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-2010-37. 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>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-2010-37 and should be submitted on or before June 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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**BILLING CODE 8011-01-P**

<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).

Securities and Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<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).