

available publicly. All submissions should refer to File Number SR-EDGX-2010-04 and should be submitted on or before July 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62431; File No. SR-ISE-2010-70]

### 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

July 1, 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 June 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 Web site at <http://www.ise.com>, on the Commission's Internet Web site at <http://www.sec.gov>, at ISE, and at the Commission's Public Reference Room.

#### 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.

##### 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> On June 30, 2010, in SR-ISE-2010-69, the ISE filed for immediate effectiveness a proposed rule change to amend DECN's fee schedule for ISE Members<sup>4</sup> to (i) eliminate a trading volume threshold found in footnote 4 to the fee schedule;<sup>5</sup> and (ii) add clarifying material to explain how certain volume thresholds will be adjusted during the month of July 2010.<sup>6</sup> The changes made

<sup>3</sup> This fee filing relates to the trading facility operated by ISE and not EDGA Exchange, Inc. and EDGX Exchange, Inc. ("EDGA and EDGX Exchanges") [sic] Direct Edge ECN will cease to operate in its capacity as an electronic communications network following the commencement of operations of EDGA and EDGX Exchanges 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> On June 30, 2010, in SR-ISE-2010-69, the Exchange eliminated the trading volume threshold found in footnote 4 of the DECN fee schedule relating to Flags E and 5. Currently, the lower rate of \$0.00025 per share is contingent upon meeting a 1,000,000 share volume threshold on a daily basis, measured monthly. The Exchange eliminated the 1,000,000 share threshold in footnote 4 to the fee schedule and added "intentionally omitted" to the footnote in order to keep the current footnote numbering intact. The Exchange believes that the elimination of such threshold will enable it to avoid having to adjust the threshold calculation for the month of July 2010. This will result in an administratively easier process for both the Exchange and Members during the migration of symbols from DECN to EDGA and EDGX Exchanges.

<sup>6</sup> EDGA and EDGX Exchanges expect to begin operating as national securities exchanges on July 2, 2010. (See SR-EDGA-2010-04 and SR-EDGX-2010-04 for EDGA and EDGX Exchange fee schedules). Following the launch date there will be a two week, phase-in period during which securities currently trading on DECN will be moved from DECN to EDGA and EDGX Exchanges. Once a symbol is migrated from DECN to EDGA and EDGX Exchanges, it will no longer be available for trading on DECN and will only be available for trading on the EDGA and EDGX Exchanges. Once the EDGA and EDGX Exchanges begin trading their

pursuant to SR-ISE-2010-69 became operative on July 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 charges were changed pursuant to SR-ISE-2010-69, DECN wishes to make corresponding changes to the amounts it passes through to non-

first security, they will thus operate in conjunction with DECN until all symbols are fully migrated.

As a result of the phased migration of symbols from DECN to EDGA and EDGX Exchanges, per SR-ISE-2010-69, three volume thresholds were adjusted for the month of July 2010 only to reflect the portion of the volume that occurs on DECN during the month. In that filing, the Exchange placed clarifying language about how these rebates are calculated in footnote numbers 1 and 2 to the DECN fee schedule. First, the removal rate on EDGA (a rebate of \$0.0002 per share) is currently contingent on the attributed MPID adding (including hidden) and/or routing a minimum average daily share volume, measured monthly, of 50,000 shares on EDGA. Any attributed MPID not meeting the aforementioned minimum is charged \$0.0030 per share for removing liquidity from EDGA (0.20% of dollar value for stocks priced less than \$1.00). However, per SR-ISE-2010-69, the Exchange amended its fee schedule to provide that for the month of July 2010 only, the 50,000 average daily volume threshold will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECN-traded symbol for all days that such symbol is traded on the DECN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECN-traded symbols during the month of July.

Secondly, Members can qualify for a rebate of \$0.0032 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. In SR-ISE-2010-69, the Exchange amended its fee schedule for the month of July 2010 only to provide that these average daily volume thresholds (5,000,000 and 50,000,000) will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECN-traded symbol for all days that such symbol is traded on the DECN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECN-traded symbols during the month of July.

Third, the rebate for adding hidden orders is currently contingent upon Members adding greater than 1,000,000 shares on a daily basis, measured monthly. Members not meeting this minimum will be charged \$0.0030 per share. In SR-ISE-2010-69, for the month of July 2010 only, the Exchange amended its fee schedule to provide that the 1,000,000 monthly share volume threshold will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECN-traded symbol for all days that such symbol is traded on the DECN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECN-traded symbols during the month of July.

<sup>23</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.

ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers are charged will be the same as the amounts that ISE Members are charged.

ISE is seeking accelerated approval of this proposed rule change, as well as an effective date of July 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 be charged equivalent amounts and that the imposition of such amounts will begin on the same July 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>7</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>8</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 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*

This 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-2010-70 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-2010-70. 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 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-2010-70 and should be submitted on or before July 29, 2010.

## 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>9</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)<sup>10</sup> of the Act, which requires that the rules of a national securities exchange provide for 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-2010-69 (the "Member Fee Filing"). The changes to the DECN fee schedule made pursuant to the Member Fee Filing became operative on July 1, 2010. DECN receives rebates and is charged fees for transactions it executes on EGDx or EDGA in its capacity as an introducing broker for its non-ISE member subscribers. The current proposal, which will apply beginning on July 1, 2010, will allow DECN to pass through the revised fees and rebates to the non-ISE member subscribers for which it acts as an introducing broker. The Commission finds that the proposal is consistent with the Act because it will establish fees and rebates for non-ISE member subscribers that are equivalent to those established for ISE Member subscribers in the Member Fee Filing.

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 fees and rebates established for ISE Member subscribers in the Member Fee Filing, resulting in equivalent fees and rebates for ISE Member and non-member subscribers. In addition, because the proposal will apply the revised fees and rebates beginning on July 1, 2010, the revised fees and rebates 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**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-ISE-2010-70) is approved on an accelerated basis.

<sup>9</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

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

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Elizabeth M. Murphy,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62430; File No. SR-ISE-2010-69]

### 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

July 1, 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 June 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) eliminate a trading volume threshold found in footnote 4 to the fee schedule and (ii) add clarifying material to explain how certain volume thresholds will be adjusted during the month of July 2010. 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>, on the Commission's Internet Web site at <http://www.sec.gov>, at ISE, and at the Commission's Public Reference Room.

#### I. 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 EDGA and EDGX Exchanges<sup>5</sup> expect to begin operating as national securities exchanges on July 2, 2010. Following the launch date there will be a two-week phase-in period during which securities currently trading on DECEN will be moved from DECEN to EDGA and EDGX Exchanges. Once a symbol is migrated from DECEN to EDGA and EDGX Exchanges, it will no longer be available for trading on DECEN and will only be available for trading on the EDGA and EDGX Exchanges. Once the EDGA and EDGX Exchanges begin trading their first security, they will thus operate in conjunction with DECEN until all symbols are fully migrated.

As a result of the phased migration of symbols from DECEN to EDGA and EDGX Exchanges, three volume thresholds will need to be adjusted for the month of July 2010 only to reflect the portion of the volume that occurs on DECEN during the month. The Exchange is proposing to place clarifying language about how these rebates are calculated in footnote numbers 1 and 2 to the DECEN fee schedule. First, the removal rate on EDGA (a rebate of \$0.0002 per share) is currently contingent on the attributed MPID adding (including hidden) and/or routing a minimum average daily share volume, measured monthly, of 50,000 shares on EDGA. Any attributed MPID not meeting the aforementioned

minimum will be charged \$0.0030 per share for removing liquidity from EDGA (0.20% of dollar value for stocks priced less than \$1.00). However, the Exchange is proposing that for the month of July 2010 only, the 50,000 average daily volume threshold will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECEN-traded symbol for all days that such symbol is traded on the DECEN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECEN-traded symbols during the month of July.

Secondly, Members can qualify for a rebate of \$0.0032 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. The Exchange is proposing that for the month of July 2010 only, these average daily volume thresholds (5,000,000 and 50,000,000), will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECEN-traded symbol for all days that such symbol is traded on the DECEN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECEN-traded symbols during the month of July.

Third, the rebate for adding hidden orders is currently contingent upon Members adding greater than 1,000,000 shares on a daily basis, measured monthly. Members not meeting this minimum will be charged \$0.0030 per share. For the month of July 2010 only, the 1,000,000 monthly share volume threshold will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECEN-traded symbol for all days that such symbol is traded on the DECEN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECEN-traded symbols during the month of July.

Finally, the Exchange is proposing to eliminate the trading volume threshold found in footnote 4 of the DECEN fee schedule relating to Flags E and 5. Currently, the lower rate of \$0.000025 per share is contingent upon meeting a 1,000,000 share volume threshold on a daily basis, measured monthly. The Exchange proposes to eliminate the 1,000,000 share threshold in footnote 4 to the fee schedule and add "intentionally omitted" to the footnote

<sup>12</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 DECEN 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.

<sup>5</sup> See SR-EDGA-2010-04 and SR-EDGX-2010-04 for EDGA and EDGX Exchange fee schedules.