

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61493; File No. SR-CHX-2010-03]

### Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Provide Credit for Transactions Involving Issues Priced Less Than One Dollar

February 4, 2010.

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> notice is hereby given that on January 29, 2010, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") 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 Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 CHX proposes to amend its Schedule of Participant Fees and Assessments (the "Fee Schedule"), effective February 1, 2010, to change its transaction fees and rebates to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System. The text of this proposed rule change is available on the Exchange's Web site at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm) and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

#### 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified

in Item IV below. The CHX 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 Changes

###### 1. Purpose

Through this filing, the Exchange would amend its Fee Schedule to increase the provide credit to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System.

The Exchange proposes to increase the provide credit in the transactions described above from 0.10% to 0.15% of the trade value.<sup>5</sup> The Exchange believes that the increased rebate will help attract additional orders to be displayed and executed on our trading facilities. The Exchange notes that some of our competitors have recently raised their provide rebates for securities priced under \$1, and that our proposed increase will help us remain competitive with these entities.<sup>6</sup>

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Among other things, the change to the fee schedule would provide incentives to Participants to increase the amount of liquidity provided on our trading facilities for securities priced less than \$1, which may contribute to an increase in trading volume on the Exchange and in the income derived therefrom.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>5</sup> "Trade value" is defined in our Fee Schedule as "a dollar amount equal to the price per share multiplied by the number of shares executed."

<sup>6</sup> The Direct Edge ECN raised its provide credit to 0.15% for transactions under \$1 in Tape A, B and C securities for its EDGX trading platform beginning in the month of January 2010.

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

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

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(B)(3)(A)(ii) [sic] of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>10</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such 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 purpose 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-CHX-2010-03 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-CHX-2010-03. 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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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

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

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

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

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> DECEN adjusted its pricing model to be more consistent with other exchanges (even though DECEN is not an exchange),<sup>6</sup> by de-linking the pricing structures of DECEN 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 DECEN 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 DECEN'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 DECEN 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).