

(1) The Units will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.201.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Units and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.<sup>18</sup>

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Units; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>19</sup> and the rules and regulations thereunder applicable to a national securities exchange.

<sup>18</sup> The Exchange notes that the New York Mercantile Exchange, of which the COMEX is a division, is an ISG member, however, the Tokyo Commodity Exchange, Inc. ("TOCOM") is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market.

<sup>19</sup> 15 U.S.C. 78f(b)(5).

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-NYSEArca-2009-113) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</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.

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</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).

### *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 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

<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>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).

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 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. 34-61478; File No. SR-CBOE-2010-009]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

February 3, 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 Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

CBOE proposes to amend [sic] its rules relating to the Penny Pilot Program. The text of the rule proposal is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, at the Commission's Public Reference Room and on the Commission's Web site <http://www.sec.gov>.

### 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

CBOE proposes to amend its rules in connection with the expansion of the Penny Pilot on February 1, 2010. Specifically, CBOE proposes to amend Rule 6.42 to provide that the minimum increment for all option series in the IWM and SPY option classes will be \$0.01 effective February 1, 2010. Currently, the minimum increments in these two classes are \$0.01 for all option series quoted below \$3 (including LEAPS), and \$0.05 for all option series \$3 and above (including LEAPS). CBOE notes that the SEC recently approved an NYSEArca rule filing which provides that the minimum increment for all option series in the IWM and SPY option classes will be \$0.01 effective February 1, 2010.<sup>5</sup>

CBOE also proposes to identify the 75 option classes that will be added to the Penny Pilot Program beginning on February 1, 2010. CBOE recently extended and expanded the Penny Pilot Program through December 31, 2010.<sup>6</sup> As described in its filing, the Pilot

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

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

<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).

<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)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 61061 (November 24, 2009), granting partial approval of SR-NYSEArca-2009-44, as modified by Amendment No. 4 thereto.

<sup>6</sup> See Securities Exchange Act Release No. 60864 (October 22, 2009), granting immediate effectiveness to SR-CBOE-2009-76.