

Nat'l ranking	Symbol	Company name	Nat'l ranking	Symbol	Company name
161 .....	HL .....	Hecla Mining Co.	165 .....	WLP .....	WellPoint Inc.
193 .....	HOG .....	Harley-Davidson Inc.	191 .....	XLB .....	Materials Select Sector SPDR Fund.
206 .....	HON .....	Honeywell International Inc.	173 .....	XXR .....	Xerox Corp.
210 .....	JOYG .....	Joy Global Inc.	148 .....	XTO .....	XTO Energy Inc.
213 .....	JWN .....	Nordstrom Inc.	130 .....	YRCW .....	YRC Worldwide Inc.
137 .....	KFT .....	Kraft Foods Inc.			

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by identifying the options classes to be added to the Pilot in a manner consistent with prior approvals and filings.

### *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.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Exchange Act<sup>5</sup> and Rule 19b-4(f)(1) thereunder,<sup>6</sup> in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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-NYSEArca-2010-06 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-NYSEArca-2010-06. 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 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 NYSE Arca's principal office and on its Web site at <http://www.nyse.com>. 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 No.

SR-NYSEArca-2010-06 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>7</sup>

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

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61489; File No. SR-CBOE-2010-008]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Co-Location Service Fees**

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 28, 2010, Chicago Board Options Exchange, Inc. ("CBOE" or the "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 CBOE. 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 the Substance of the Proposed Rule Change**

Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") proposes to amend its Fees Schedule relating to co-location service fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's principal office, and at the Commission's Public Reference Room.

<sup>7</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>5</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>6</sup> 17 CFR 240.19b-4(f)(1).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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

For a monthly fee, the Exchange provides members with cabinet space in CBOE's building for placement of network and server hardware. The fee is \$10 per month per "U" of shelf space (which is equal to 1.75 inches).<sup>3</sup> A member also receives power, cooling, security and assistance with installation and connection of the equipment to the Exchange's servers, at no additional charge. This "co-location service" provides members with close physical proximity to the Exchange's electronic trading system, which helps meet their need for high performance processing and low latency.

The co-location service is available to any member that requests the service and pays the monthly fee.<sup>4</sup> The Exchange believes that for the foreseeable future it has sufficient space to accommodate all members who may request the co-location service. Other than the co-location service, the Exchange does not provide any co-locating member with any advantage over any other co-locating member or any non-co-locating member with respect to access to the Exchange's

trading system. The Exchange's systems are designed to minimize, to the extent possible, any advantage for one member over another. The foregoing statements apply equally to both inbound and outbound data.

The Exchange proposes to clarify its Fees Schedule relating to co-location fees in a couple of respects. First, the Exchange proposes to move the co-location fees from Section 17 of the Fees Schedule (Hybrid Fees) to Section 8 (Facility Fees) because these fees are more accurately described as facility fees. Second, the Exchange proposes to clarify that the co-location fees are charged in increments of 4 "U" (which is equal to 7 inches) because the cabinet space is available in 4 U increments.

#### 2. Statutory Basis

By clarifying the Exchange's fees for its co-location service and providing a fuller description of the service, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</sup> of the Act 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 addition, the Exchange believes the proposed rule change furthers the objectives of Section 6(b)(5)<sup>7</sup> of the Act in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal**

**Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-CBOE-2010-008 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-CBOE-2010-008. 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 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

<sup>3</sup> See Securities Exchange Act Release No. 57191 (January 24, 2008), 73 FR 5611 (January 30, 2008). The fee for a Sponsored User is \$20 per month per "U". See Securities Exchange Act Release No. 58189 (July 18, 2008), 73 FR 43274 (July 24, 2008).

<sup>4</sup> A member using the co-location service may also pay certain CBOEdirect Connectivity Charges that are set forth in Section 16 of the Fees Schedule. These fees are charged for member connectivity to CBOEdirect regardless of whether or not a member is using the co-location service. These fees include a \$40 per month "CMi Application Server" fee for server hardware used to connect to the CBOE CMi API, a \$40 per month "Network Access Port" fee for use of the CMi API and a \$40 per month "FIX Port" fee for use of the FIX API. See Securities Exchange Act Release No. 57191, *supra* footnote 1. Each of the foregoing fees are \$80 per month for a Sponsored User. See Securities Exchange Act Release No. 58189, *supra* footnote 1.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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-CBOE-2010-008 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>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61491; File No. SR-ISE-2010-11]

### 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

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 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>.

#### 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. On January 29, 2010, the ISE filed for immediate effectiveness a proposed rule change to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members<sup>3</sup> to simplify its fee schedule by (i) re-introducing a rebate;<sup>4</sup> (ii) adding a fee for stocks priced less than \$1 that remove liquidity on EDGA;<sup>5</sup> (iii) eliminating certain tables on the fee schedule;<sup>6</sup> and (iv) making

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

<sup>4</sup> In SR-ISE-2009-68, 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. See Securities Exchange Act Release No. 60769 (October 2, 2009), 74 FR 51903 (October 8, 2009) (SR-ISE-2009-68). In SR-ISE-2010-10, the Exchange re-introduced an Ultra Tier rebate of \$0.0031 per share for competitive reasons.

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>5</sup> In SR-ISE-2010-10, the Exchange added 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 was 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.

<sup>6</sup> In SR-ISE-2010-10, in order to further simplify its fee schedule for Members, the Exchange deleted

typographical and clarifying changes to the fee schedule.<sup>7</sup> The changes made

the table on the fee schedule entitled "Fees per Share for Special Order Types" as the Exchange believed that the information on this schedule was repetitive of the information in the "liquidity flags and associated fees" table below it. As a result of this deletion, the Exchange relocated footnote numbers 4 and 5. Footnote 4 was relocated to "Flag E" and also added to "Flag 5" to clarify it. Footnote 5 was relocated to "Flag O." These are the corresponding areas where these references belong.

<sup>7</sup> Effective January 1, 2010, DECEN adjusted its pricing model to be more consistent with other exchanges (even though DECEN is not an exchange), by de-linking the pricing structures of DECEN to eliminate pricing offers that are contingent on activity across both platforms. See Securities Exchange Act Release No. 61289 (January 5, 2010), 75 FR 1674 (January 12, 2010) (SR-ISE-2009-108). 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). 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). The Exchange believes that these same goals were also advanced for the most part in SR-ISE-2010-10, which made technical and clarifying changes to DECEN's fee schedule.

In SR-ISE-2009-108, to effectuate the foregoing, the Exchange deleted certain changes 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, in SR-ISE-2010-10, the Exchange deleted the corresponding footnote 1 from flags B, V, Y, 3, and 4 from the EDGA column as this footnote no longer applies.

In addition, in SR-ISE-2010-10, the Exchange reworded the first sentence in footnote 1 to clarify that adding can include placing hidden orders.

In SR-ISE-2009-108, 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. In SR-ISE-2010-10, the Exchange corrected a typographical error on its current schedule by adding parenthesis around the "0.15% of dollar value" to clarify that this was a rebate, and *not* a charge, for adding liquidity on EDGX in securities priced less than \$1.

In SR-ISE-2010-10, for Flag P, the Exchange corrected a typographical error on the schedule by inverting the columns that were displayed. For EDGX, flag P was corrected to read "N/A" and for EDGA it was corrected to read a rebate of \$0.0025 per share (i.e., (0.0025)).

In SR-ISE-2010-10, the Exchange also clarified 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 was already conveyed in Flag F and was deleted in order to simplify and clarify the fee schedule. The first sentence of footnote 3 was also deleted as it

Continued

<sup>8</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.