

submissions should refer to File Number SR–ISE–2009–29 and should be submitted on or before June 30, 2009.

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. 34–60030; File No. SR–ISE–2009–31]

### 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

June 3, 2009.

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 1, 2009, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change. The proposed rule change is described in Items I and II below, which Items have been prepared by ISE. 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>, at the principal office of the Exchange, 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. On May 29, 2009, the ISE filed for immediate effectiveness a proposed rule change to amend DECN’s fee schedule for ISE Members<sup>3</sup> to increase the per share rebate in securities priced at or above a \$1.00 that are reported to Tape A and Tape C from \$0.0025 to \$0.003 for orders that add liquidity on EDGX.<sup>4</sup> In SR–ISE–2009–29, the Exchange also increased the fee for orders that remove liquidity on EDGX from \$0.0026 to \$0.0028. The fee changes made pursuant to SR–ISE–2009–29 became operative on June 1, 2009.

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 such rebates and charges were changed pursuant to SR–ISE–2009–29, DECN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive and are charged will be the same as the amounts that ISE Members receive and are charged.

ISE is seeking accelerated approval of this proposed rule change, as well as a retroactive effective date of June 1, 2009. 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 receive and be charged equivalent amounts and that the imposition of such amounts will begin on the same June 1, 2009 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>5</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>6</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

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. 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 No. SR–ISE–2009–31 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.

<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.

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

<sup>4</sup> See SR–ISE–2009–29.

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

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

All submissions should refer to File Number SR-ISE-2009-31. 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 inspection and copying 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 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-2009-31 and should be submitted on or before June 30, 2009.

#### 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>7</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4),<sup>8</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 any facilities.

ISE recently amended DECN's fee schedule for ISE Members to increase the per share rebate in securities priced at or above a \$1.00 that are reported to Tape A and Tape C from \$0.0025 to \$0.003 for orders that add liquidity on EDGX, and also increased the fee for

orders that remove liquidity on EDGX from \$0.0026 to \$0.0028 per share.<sup>9</sup> The fee changes made pursuant to SR-ISE-2009-29 became operative on June 1, 2009. DECN receives rebates and is charged fees for transactions it executes on EDGX or EDGA in its capacity as an introducing broker for its non-ISE member subscribers.

The current proposal, which will apply retroactively to June 1, 2009, will allow DECN to pass through the revised rebates and fees 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 provide rebates and charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.<sup>10</sup>

ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice in the **Federal Register**. As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the revised rebate and fees established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebates and fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised rebates and fees retroactively to June 1, 2009, the revised rebates and fees 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 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-2009-31) be, and hereby is, approved on an accelerated basis.

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

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

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<sup>9</sup> See Securities Exchange Act Release No. 60031 (June 3, 2009) (notice of filing and immediate effectiveness of File No. SR-ISE-2009-29) (the "Member Fee Filing").

<sup>10</sup> See note 9, *supra*.

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

<sup>12</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60026; File No. SR-BX-2009-020]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change Regarding Market Maker Obligations

June 2, 2009.

On April 8, 2009, NASDAQ OMX BX, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change regarding market maker obligations. The proposal was published in the **Federal Register** on April 28, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Exchange proposes to amend Chapter VI, Section 6 (Market Maker Quotations) of the BOX Rules to change certain obligations of a Market Maker regarding the Request for Quote ("RFQ") process. The proposed rule change in Section 6(b)(ii) clarifies that within three seconds of receiving an RFQ, a Market Maker must continuously maintain, without interruption, a valid two-sided quotation for at least thirty seconds. If however, during that thirty second time span, the quotation becomes invalid, the Market Maker must post a valid two sided quotation as soon as practicable, but within five seconds. The Exchange also proposes to remove Section 6(d)(ii), which provided that a Market Maker may be required to submit a single quotation or maintain continuous quotations in one or more series when called upon by an Options Official, if the official believes it is necessary to do so in the interest of a fair and orderly market, and replace it with Section 6(b)(iv). As proposed, Section 6(b)(iv) will provide that an Options Official may, in the interest of a fair and orderly market, call upon Market Makers to post a quotation in the same manner as if an RFQ was issued by an Options Participant.

Finally, the Exchange proposes to amend Section 6(d) to establish market maker quoting standards based upon a percentage of time measurement. As proposed, the section will clarify that "continuous quoting" reflects quoting parameters based on a daily time measurement and will remove

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59804 (April 21, 2009), 74 FR 19256 (April 28, 2009).

<sup>7</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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