

circumstances. The MSRB further believes that various factors appropriate to the particular facts and circumstances should be assessed by issuers, obligated persons and their agents in coming to a decision on whether to make a voluntary submission on continuing disclosure to EMMA, regardless of the potential category, to the extent that such parties are not otherwise obligated to make such disclosures.

The MSRB does not agree that the establishment of a distinct category for the submission of rating agency materials creates an inappropriate regulatory encouragement for such disclosures. The MSRB noted that submitters may themselves assess the factors raised by S&P in determining whether to provide such disclosure and/or provide additional information necessary to make such disclosure effective and not misleading to the general public. Because such disclosure is wholly voluntary, the MSRB does not believe that there is a material likelihood that the creation of this category would serve as an incentive to reduce information provided to the rating agencies or to seek ratings only from the rating agency requiring the least amount of information.

With regard to the inclusion of rating agency materials in the same category as materials provided to credit or liquidity providers, the MSRB noted that the general categorization structure is intended to serve as a finding aid for public users and that, within any particular category, the nature of the specific documents submitted may vary. To clarify that the MSRB does not intend to equate rating agencies with credit or liquidity providers and to provide for a broader range of material to be included in this category, the MSRB has determined to rename this category as "information provided to rating agency, credit/liquidity provider or other third party." In submitting such information, submitters should consider including an indication of the type of third-party recipient, to the extent appropriate for purposes of understanding the nature of the information submitted.<sup>15</sup> The Commission believes that the MSRB has reasonably addressed S&P's concerns in light of the voluntary nature of the information allowed to be submitted to the continuing disclosure service.

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB's responses to the comment letters and finds that the proposed rule change is consistent with the

requirements of the Act and the rules and regulations thereunder applicable to the MSRB<sup>16</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Act<sup>17</sup> and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.<sup>18</sup> In particular, the Commission finds that the proposed rule change is consistent with the Act because the EMMA continuing disclosure service, as amended by the proposed rule change, would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities, and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. The inclusion of voluntary continuing disclosure documents in the EMMA continuing disclosure service would further help make information useful for making investment decisions more easily accessible to all participants in the municipal securities market on an equal basis throughout the life of the securities. Broad access to continuing disclosure documents through the EMMA continuing disclosure service should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers and their securities. A single centralized and searchable venue for free public access to disclosure information should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities and the potential investment risks. Free access to this information—previously

generally available, if at all, through paid subscription services or on a per-document fee basis—should reduce transaction costs for dealers and investors.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-MSRB-2009-04), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-13404 Filed 6-8-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60031; File No. SR-ISE-2009-29]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating to Amending the Direct Edge ECN Fee Schedule To Expand the Applicability of the Super Tier Rebate to All Securities Priced at or Above \$1.00 and To Increase the Take Fee

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 May 29, 2009, 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 apply the Super Tier Rebates, as defined below, to all securities priced at or above \$1.00 that add liquidity on EDGX and to raise the fee charged to orders that remove liquidity on EDGX. All of the changes

<sup>16</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>18</sup> *Id.*

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</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>15</sup> See Response Letter III, *supra* note 5.

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>, 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 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. Currently, DECN's fee schedule includes a per share rebate in securities reported to Tape A and Tape C of \$0.003 per share for ISE Members that add liquidity on EDGX if the ISE Member satisfies any of the following three criteria on a daily basis, measured monthly: (i) Adding 40,000,000 shares or more on either EDGX, EDGA or EDGX and EDGA combined; (ii) adding 20,000,000 shares or more on either EDGX, EDGA or EDGX and EDGA combined and routing 20,000,000 shares or more through EDGA; or (iii) adding 10,000,000 shares or more of liquidity to EDGX, so long as added liquidity on EDGX is at least 5,000,000 shares greater than the previous calendar month. The rebate described above is referred to as a "Super Tier Rebate" on the DECN fee schedule. Currently, ISE Members that add liquidity in Tape A and Tape C securities and don't meet the Super Tier criteria, as set forth above, receive a rebate of \$0.0025 for such orders.

The Exchange is now proposing to expand the applicability of the aforementioned Super Tier Rebate during the month of June by eliminating the need to meet the "Super Tier" criteria described above for Tape A and Tape C securities and rebating \$0.003 to all orders that add liquidity on EDGX. The Exchange is increasing this rebate to maintain a competitive rate. This fee

change will become operative on June 1, 2009.

In an effort to offset the cost of increasing the rebate for orders that add liquidity on EDGX, the Exchange is proposing to increase the fee for orders that remove liquidity on EDGX from \$0.0026 to \$0.0028. This fee change will become operative on June 1, 2009.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>5</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, expanding the applicability of the Super Tier Rebate and offering pricing incentives to market participants who route orders to DECN allows 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 incentivize market participants to direct their order flow to DECN. 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.

### 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. 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>6</sup> and Rule 19b-4(f)(2)<sup>7</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 No. SR-ISE-2009-29 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-2009-29. 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 Commissions 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

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 19b-4(f)(2).

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.*

[FR Doc. E9–13403 Filed 6–8–09; 8:45 am]

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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).