

*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-BX-2010-023. 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 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 publicly available. All submissions should refer to File Number SR-BX-2010-023 and should be submitted on or before April 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

[FR Doc. 2010-7976 Filed 4-7-10; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61826; File No. SR-ISE-2010-24]

**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**

April 1, 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 March 24, 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.<sup>3</sup> On March 24, 2010, the ISE filed for immediate effectiveness a proposed rule change to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members<sup>4</sup> to: (i) Reflect pass through charges of other market centers;<sup>5</sup> and (ii) make typographical and clarifying changes.<sup>6</sup> The changes made pursuant

<sup>3</sup> This fee filing relates to the trading facility operated by ISE and not EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge ECN LLC (EDGA and EDGX) will cease to operate in its capacity as an electronic communications network following the commencement of operations of EDGA Exchange, Inc. and EDGX Exchange, Inc. as national securities exchanges.

<sup>4</sup> References to ISE Members in this filing refer to DECEN Subscribers who are ISE Members.

<sup>5</sup> In SR-ISE-2009-57, the Exchange adopted a fee of \$0.0024 per share for securities priced at or above \$1.00 which add liquidity to LavaFlow ECN ("LavaFlow") and are routed from either EDGX or EDGA. Such a strategy is deemed a ROLF routing strategy, which is a destination specific routing strategy that will first sweep the EDGA or EDGX order book before being delivered to LavaFlow. A conforming amendment was made to the fee schedule to yield an "M" flag to account for this fee. Conversely, for liquidity that is routed through either EDGA or EDGX and removes liquidity from LavaFlow, the Exchange adopted a fee for ISE members of \$0.0029 per share for securities priced at or above \$1.00. Such situation yields a flag of "U." However, if an ISE member posts an average of 50,000 shares or more using a ROLF routing strategy, yielding flag M, then such ISE member's fee, when removing liquidity from LavaFlow, decreased to \$0.0022 per share and yielded flag U. See Securities Exchange Act Release No. 60442 (August 5, 2009), 74 FR 40249 (August 11, 2009) (SR-ISE-2009-57).

In SR-ISE-2010-23, because the Exchange passed through to Exchange members the actual transaction fees assessed by away markets, the Exchange amended its fees schedule to reflect LavaFlow's increase in fees. Effective March 1, 2010, LavaFlow increased its fees and thresholds for meeting the above-described tier. Members that remove liquidity from LavaFlow if the Member's attributable MPID executes a minimum of 100,000 shares (instead of 50,000 shares) average daily volume using strategy ROLF (yielding Flag M) are now charged \$0.0023 per share (instead of \$0.0022 per share). The Exchange amended its fee schedule to pass through this change to its members by reflecting it in footnote 6 on the fee schedule.

Secondly, effective April 1, 2010, the Nasdaq Stock Market updated its transaction fee schedule to introduce a unified removal rate (\$0.0030 per share executed) for all U.S. equities, across Tapes A, B, and C.<sup>5</sup> As a result of this change, the Exchange made a conforming change to delete footnote number 8 on the "2" flag and re-number it as footnote number 7 since the Nasdaq Stock Market no longer differentiates its removal rate across Tapes A, B, and C. See Equity Trader Alert 2010-12 (effective April 1, 2010).

<sup>6</sup> In SR-ISE-2010-23, the Exchange made the following typographical and clarifying changes to the fee schedule: (i) on flag H, for EDGA, 0.001 was changed to read "0.0010" to conform the numbering

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<sup>14</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.

to SR-ISE-2010-23 became operative on April 1, 2010.

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-2010-23, 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 an effective date of April 1, 2010. 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 April 1, 2010 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>7</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>8</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.

with the other fees on the schedule (emphasis added); and (ii) in footnote number 6, the Exchange deleted an additional parenthesis at the end of the phrase "(yielding Flag U)."

<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 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 Number SR-ISE-2010-24 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-2010-24. 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>9</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

<sup>9</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.

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-2010-24 and should be submitted on or before April 29, 2010.

## 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>10</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)<sup>11</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 its facilities.

As described more fully above, ISE recently amended DECN's fee schedule for ISE Members pursuant to SR-ISE-2010-23 (the "Member Fee Filing"). The fee changes made pursuant to the Member Fee Filing became operative on April 1, 2010. 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 April 1, 2010, 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>12</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 of filing thereof 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

<sup>10</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> *Id.*

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 April 1, 2010, 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 of filing thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-ISE-2010-24) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-7975 Filed 4-7-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61834; File No. SR-BATS-2010-006]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.9(c)(12), entitled "Destination Specific Order"

April 2, 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 March 30, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it 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 Exchange is proposing to amend BATS Rule 11.9(c)(12), entitled "Destination Specific Order."

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, on the Commission's Web site at <http://www.sec.gov>, 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 Exchange 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The purpose of the proposed rule change is to provide an additional option to Users of the Exchange with respect to the designation of a "Destination Specific Order". Destination Specific Orders are market or limit orders that are routed by BATS to an away trading center after first being exposed to the BATS order book ("BATS Book"). As currently written, the Rule 11.9(c)(12) requires the specification of a particular away trading center to which an order will route after checking the BATS Book. Accordingly, BATS currently offers Users options to route to a single trading center designated by the User after first being exposed to the BATS Book. For instance, a User can currently send an order that first checks the BATS Book for liquidity and then routes to the New York Stock Exchange. The Exchange also currently offers Users with the option to send a "Modified Destination Specific Order," defined in BATS Rule 11.9(c)(13), which routes to one or more away trading centers without first checking the BATS Book. The only form of Modified Destination Specific Order

currently offered by the Exchange routes to multiple Alternative Trading Systems disclosed by the Exchange prior to checking the BATS Book (referred to by the Exchange as a "Dark Scan" order). Although the identity of the Alternative Trading Systems to which a Dark Scan order may route is disclosed to Exchange Users, Users cannot designate the specific Alternative Trading System or Systems, but rather, rely on the Exchange's smart order router to determine the Alternative Trading System or Systems to which the order will be routed and the order of such routing.

The proposed rule change is being submitted by the Exchange so that BATS can offer Users the additional option to designate an order to route to various undisclosed Alternative Trading Systems selected by the Exchange after first being exposed to the BATS Book (a "BATS + DART Order"). Accordingly, as amended, a User will be able to designate an order that will first check the BATS Book for liquidity and then be routed to one or to multiple Alternative Trading Systems with which the Exchange has connections. Similar to a Dark Scan order, a User will not be able to designate any specific Alternative Trading System or Systems to which the order will be routed, but rather, the Exchange will make the routing decisions with respect to any BATS + DART Order that is not filled on the Exchange. Orders that are not executed in full after routing away would continue to be processed by the Exchange as described in BATS Rule 11.13(a)(2).

The Exchange is not proposing at this time to add functionality that would allow Users to designate multiple specific venues to which an order will route. Rather, a Destination Specific Order will continue to refer to an order that first checks the Exchange for liquidity and then routes to a specific venue or venues, with the only choice of multiple venues being the undisclosed list of Alternative Trading Systems offered through the DART routing program. Users that wish to have the Exchange first attempt to execute an order on the BATS Book and, if not executed, then route to multiple different venues, including Alternative Trading Systems, can use the Exchange's general best execution routing strategies, DART and CYCLE, but cannot specifically identify the venues to which the Exchange will route.

As occurs today, the routing performed in connection with this proposed change will be conducted by an affiliate of the Exchange, BATS

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</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).

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