

other non-standard routing options such as Directed ISO's, Dark Scan orders, and orders routed through its "DART" strategy to dark liquidity venues. For any security priced under \$1.00 that is routed away and executed through an order type or routing strategy other than CYCLE, the Exchange will charge the specified fee or provide the specified rebate for such execution. For instance, an order for a security priced below \$1.00 that is routed and executed through Dark Scan would receive the same \$0.0001 rebate as a security priced above \$1.00.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.<sup>6</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it 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 Exchange believes that its fees and rebates are competitive with those charged by other venues. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

### (B) Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

### (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.

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

The foregoing proposed rule change has been designated as a fee change

other markets." The Exchange intended this to apply only to orders routed through CYCLE, and believes that the proposed language clarifies this intent.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the 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 proposal 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-BATS-2009-011 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 No. SR-BATS-2009-011. 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 changes 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 BATS. 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-BATS-2009-011 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59887; File No. SR-ISE-2009-24]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, 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

May 7, 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 6, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On May 7, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, 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, as modified by Amendment No. 1, 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

<sup>10</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>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

("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 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. On May 1, 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 reported to Tape A and Tape C from \$0.0029 to \$0.003 for orders 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.<sup>4</sup> DECN is a member of ISE as well as a facility of ISE. The rebate described above is referred to as a "Super Tier Rebate" on the DECN fee schedule.

In an effort to increase volume on EDGA, DECN currently offers volume discounts for ISE Members who route 20,000,000 shares or more on a daily basis, measured monthly, to Nasdaq through EDGA using order types that are solely eligible for routing to Nasdaq. Prior to SR-ISE-2009-23, orders were

charged at \$0.0025 per share with respect to EDGA routed volume. ISE Members routing 30,000,000 shares per day were charged \$0.0024 per share with respect to EDGA routed volume. Recently, Nasdaq has amended its pricing by increasing its fee for orders that remove liquidity by \$0.0004.<sup>5</sup> Accordingly, in SR-ISE-2009-23, the Exchange amended the DECN volume discounts that apply to ISE Members by increasing each volume discount fee by \$0.0004, which changed the fee to \$0.0029 per share and \$0.0028 per share, respectively.

On April 1, 2009, the Exchange amended the DECN fee schedule to reduce the rebate from \$0.0035 per share to \$0.003 per share for orders that add liquidity on EDGX in securities priced at or above \$1.00 that are reported to Tape B by ISE Members.<sup>6</sup> In connection with this amendment, a portion of the corresponding footnote on the DECN fee schedule should have been deleted, but such deletion was overlooked at the time of the filing. The relevant portion of the footnote states "In the event that Direct Edge offers a rebate higher than \$0.0029 per share for subscribers who do not meet the criteria for the Super Tier, then those who meet the aforementioned criteria will receive the higher rebate." In SR-ISE-2009-23, the Exchange deleted this language as Direct Edge is no longer offering this incentive.

In SR-ISE-2009-23, the Exchange also made certain clarifying changes to DECN's fee schedule. DECN's fee schedule includes a description of liquidity flags and associated fees. Flag D is appended to orders that are routed to and executed on the New York Stock Exchange ("NYSE"). Such orders are charged a fee on the NYSE because the order is removing liquidity. The fee assessed to this order is then passed back to the ISE Member that originated the order. In SR-ISE-2009-23, the Exchange amended the description of Flag D to include, not just orders that are routed to NYSE, but also orders that are re-routed to NYSE. Meaning, the order that originates at DECN may get routed to another market center for execution, but that market center may re-route the order to NYSE, where the order ultimately receives an execution that results in a removal of liquidity. In this circumstance, the fee assessed to the order will still be passed back to the ISE Member that originated the order as

if such order was originally routed to NYSE.

Finally, in SR-ISE-2009-23, the Exchange deleted a portion of a footnote on DECN's fee schedule that provides for a lower charge to ISE Members whose orders in securities that are reported to Tape A and Tape C first get routed to Nasdaq Stock Market ("Nasdaq") and then get re-routed by Nasdaq. In this circumstance, the ISE Member would be charged a fee of \$0.0026 per share for removing liquidity in Tape A and Tape C securities regardless of where the order ultimately gets executed and regardless of what the executing market center charges Nasdaq. Whereas, orders that get routed to any other market center and then re-routed by that market center get charged a fee of \$0.003 per share when the order removes liquidity. In SR-ISE-2009-23, the Exchange proposed to delete the portion of the footnote that provides for this exception because Nasdaq has raised their fee to \$0.003 per share for all orders that get routed to Nasdaq and then re-routed by Nasdaq.

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 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 were changed pursuant to SR-ISE-2009-23, 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 will be the same as the amounts that ISE Members receive.

ISE is seeking accelerated approval of this proposed rule change, as well as a retroactive effective date of May 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 equivalent amounts and that the imposition of such amounts will begin on the same May 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>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

<sup>5</sup> See Securities and Exchange Commission Release No. 59843 (April 29, 2009), 74 FR 21046 (May 6, 2009) (SR-NASDAQ-2009-035).

<sup>6</sup> See Securities and Exchange Commission Release Nos. 59692 (April 2, 2009), 74 FR 16024 (April 8, 2009) (SR-ISE-2009-17).

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

<sup>4</sup> See SR-ISE-2009-23.

<sup>7</sup> 15 U.S.C. 78f.

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

other charges among its members and other persons using its facilities. In particular, this proposal will ensure that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will receive equivalent rebates.

#### *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-2009-24 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-2009-24. 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, 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. 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-2009-24 and should be submitted by June 4, 2009.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4),<sup>10</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 to increase the Super Tier Rebate in securities reported to Tape A and Tape C and revise other rebates and fees.<sup>11</sup> DECN receives rebates and charges fees for transactions it executes on EGDx or EDGA in its capacity as an introducing broker for its non-ISE member subscribers.

The current proposal, which will apply retroactively to May 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>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 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 May 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>13</sup> that the proposed rule change, as amended (SR-ISE-2009-24) 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. E9-11229 Filed 5-13-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59875; File No. SR-NASDAQ-2009-043]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify DOT, SCAN and STGY Routing Strategies To Incorporate an Optional Pre-Routing Display Period

May 6, 2009.

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 April 30, 2009, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the

<sup>9</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> See Securities Exchange Act Release No. 34-59888 (May 7, 2009) (notice of filing and immediate effectiveness of File No. SR-ISE-2009-23) (the "Member Fee Filing").

<sup>12</sup> See note 11, *supra*.

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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