

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

1. Purpose

Currently, the Exchange's Schedule of Fees for equity transactions includes a rebate of \$0.0035 per share for orders that add liquidity in securities priced at or above \$1.00 (excluding both order delivery and MidPoint Match orders) that are reported to Tape B. The Exchange is now proposing to lower that rebate from \$0.0035 to \$0.003 per share for orders that add liquidity in securities priced at or above \$1.00 (excluding both order delivery and MidPoint Match orders) that are reported to Tape B. The Exchange is lowering this rebate in an effort to keep its pricing competitive with other exchanges. The aforementioned fee change will become operative on April 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>3</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>4</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, lowering the rebate in Tape B securities will allow the ISE's pricing to remain competitive with other exchanges.

*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)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</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-2009-16 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-2009-16. 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. 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-2009-16 and should be submitted by April 29, 2009.

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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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59692; File No. SR-ISE-2009-17]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, LLC Relating to Amending the Direct Edge ECN Fee Schedule Applicable to International Securities Exchange Members**

April 2, 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 March 27, 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 to lower the rebate for orders that add liquidity on EDGX in securities priced at or above \$1.00 that are reported to Tape B. 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.

<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>3</sup> 15 U.S.C. 78f.

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

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

<sup>6</sup> 17 CFR 19b-4(f)(2).

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**

On December 23, 2008, the ISE closed a transaction whereby, among other things, ISE Stock Exchange, LLC ("ISE Stock Exchange"), a Delaware limited liability company, merged with and into Maple Merger Sub, LLC ("Maple Merger Sub"), a Delaware limited liability company and a wholly owned subsidiary of Direct Edge Holdings LLC ("Direct Edge"), with Maple Merger Sub being the surviving entity.<sup>3</sup> As part of the same transaction, ISE Holdings purchased equity interests in Direct Edge such that subsequent to completing the transaction, ISE Holdings owns a 31.54% equity interest in Direct Edge. Following the closing of the transaction, the Commission deemed DECEN to be a facility of the ISE, which would require ISE to file rules for DECEN. However, the Commission granted ISE a temporary exemption from the rule filing requirements imposed by Section 19(b) of the Act, provided that ISE and DECEN comply with certain conditions, including but not limited to, requiring ISE to file a proposed rule change if DECEN's fee schedule is sought to be modified.<sup>4</sup>

Currently, DECEN's fee schedule includes a rebate for ISE Members of \$0.0035 per share for orders that add liquidity on EDGX in securities priced at or above \$1.00 that are reported to Tape B. The Exchange is now proposing to lower that rebate from \$0.0035 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. The Exchange is lowering this rebate to keep its pricing consistent with the ISE Stock Exchange's Schedule of Fees. The aforementioned fee change will become operative on April 1, 2009.

<sup>3</sup> See Securities and Exchange Commission Release No. 34-59135 (December 22, 2008), 73 FR 79954 (December 30, 2008)(SR-ISE-2008-85) (Order approving a proposed rule change, as modified by Amendment No. 1, to purchase by International Securities Exchange Holdings, Inc. of an ownership interest in Direct Edge).

<sup>4</sup> The Commission notes that this exemption was granted, subject to certain conditions, to ISE with respect to DE ECN only, to allow DECEN to operate as a facility of ISE without being subject to the rule filing requirements of Section 19(b) of the Act for a temporary period. See Exchange Act Release No. 59133 (December 22, 2008), 73 FR 79940 (December 30, 2009) (Order granting application for a temporary conditional exemption pursuant to Section 36(a) of the Act).

**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, lowering the rebate in Tape B securities will allow DECEN's rebate to match the rebate provided on the ISE Stock Exchange.

*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)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(2)<sup>8</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
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No. SR-ISE-2009-17 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-2009-17. 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-2009-17 and should be submitted by April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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

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

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

<sup>8</sup> 17 CFR 19b-4(f)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).