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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. 34-61491; File No. SR-ISE-2010-11]

### 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

February 4, 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 January 29, 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. On January 29, 2010, the ISE filed for immediate effectiveness a proposed rule change to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members<sup>3</sup> to simplify its fee schedule by (i) re-introducing a rebate;<sup>4</sup> (ii) adding a fee for stocks priced less than \$1 that remove liquidity on EDGA;<sup>5</sup> (iii) eliminating certain tables on the fee schedule;<sup>6</sup> and (iv) making

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

<sup>4</sup> In SR-ISE-2009-68, the Exchange amended the criteria for meeting the Ultra Tier by allowing ISE Members to receive a \$0.0032 rebate per share for securities priced at or above \$1.00 when ISE Members add liquidity on EDGX if the attributed MPID posts 1% of the total consolidated volume ("TCV") in average daily volume ("ADV"). TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B, and C securities. See Securities Exchange Act Release No. 60769 (October 2, 2009), 74 FR 51903 (October 8, 2009) (SR-ISE-2009-68). In SR-ISE-2010-10, the Exchange re-introduced an Ultra Tier rebate of \$0.0031 per share for competitive reasons.

The Ultra Tier rebate (\$0.0031 per share), which is a higher rebate than the next best rebate (\$0.0029 per share) for adding liquidity on EDGX, is also more difficult to reach, as a higher volume threshold is required based on recent TCV figures. For example, 1% of the average TCV for January 2010 (8.9 billion) was approximately 89 million shares. This threshold far exceeds the criteria (no minimum share volume requirement) to meet the next best rebate of \$0.0029 per share. In addition, the higher rebate also results in part from lower administrative costs associated with higher volume.

<sup>5</sup> In SR-ISE-2010-10, the Exchange added a fee to its schedule to provide that stocks priced less than \$1 will be charged 0.20% of the dollar value if they do not meet the minimum average daily share volume of 50,000 shares on EDGA to qualify for the removal rate. A conforming footnote 1 was added in the first table on the fee schedule (next to the word "Free") for removing liquidity in stocks less than \$1.00 on EDGA.

<sup>6</sup> In SR-ISE-2010-10, in order to further simplify its fee schedule for Members, the Exchange deleted

typographical and clarifying changes to the fee schedule.<sup>7</sup> The changes made

the table on the fee schedule entitled "Fees per Share for Special Order Types" as the Exchange believed that the information on this schedule was repetitive of the information in the "liquidity flags and associated fees" table below it. As a result of this deletion, the Exchange relocated footnote numbers 4 and 5. Footnote 4 was relocated to "Flag E" and also added to "Flag 5" to clarify it. Footnote 5 was relocated to "Flag O." These are the corresponding areas where these references belong.

<sup>7</sup> Effective January 1, 2010, DECEN adjusted its pricing model to be more consistent with other exchanges (even though DECEN is not an exchange), by de-linking the pricing structures of DECEN to eliminate pricing offers that are contingent on activity across both platforms. See Securities Exchange Act Release No. 61289 (January 5, 2010), 75 FR 1674 (January 12, 2010) (SR-ISE-2009-108). Secondly, the Exchange simplified its fee schedule in order to provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECEN to the EDGA and EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission). On May 7, 2009, each of EDGA Exchange, Inc. and EDGX Exchange, Inc. (the "EDGA and EDGX Exchanges") filed their respective Form 1 applications to register as a national securities exchange ("Form 1") pursuant to Section 6 of the Securities Exchange Act of 1934. On July 30, 2009, the Exchanges filed Amendment No. 1 to the Form 1 Application. On September 17, 2009, the Form 1 was published in the **Federal Register** for notice and comment. See Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009). The Exchange believes that these same goals were also advanced for the most part in SR-ISE-2010-10, which made technical and clarifying changes to DECEN's fee schedule.

In SR-ISE-2009-108, to effectuate the foregoing, the Exchange deleted certain charges in footnote 1 of the fee schedule, including one whereby ISE Members were charged \$0.0002 per share to add liquidity on EDGA unless the attributed MPID added a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. Prior to January 1, 2010, any attributed MPID meeting the aforementioned minimum was not charged to add liquidity on EDGA. Since this charge was deleted from footnote 1, in SR-ISE-2010-10, the Exchange deleted the corresponding footnote 1 from flags B, V, Y, 3, and 4 from the EDGA column as this footnote no longer applies.

In addition, in SR-ISE-2010-10, the Exchange reworded the first sentence in footnote 1 to clarify that adding can include placing hidden orders.

In SR-ISE-2009-108, for securities priced less than \$1, the Exchange changed the fee for adding liquidity on EDGX from free to a rebate of 0.15% of the dollar value of the transaction. In SR-ISE-2010-10, the Exchange corrected a typographical error on its current schedule by adding parenthesis around the "0.15% of dollar value" to clarify that this was a rebate, and *not* a charge, for adding liquidity on EDGX in securities priced less than \$1.

In SR-ISE-2010-10, for Flag P, the Exchange corrected a typographical error on the schedule by inverting the columns that were displayed. For EDGX, flag P was corrected to read "N/A" and for EDGA it was corrected to read a rebate of \$0.0025 per share (i.e., (0.0025)).

In SR-ISE-2010-10, the Exchange also clarified Footnote 3. The second sentence of this footnote states that the "rebate for adding liquidity on the NYSE of \$0.0010 per share." This information was already conveyed in Flag F and was deleted in order to simplify and clarify the fee schedule. The first sentence of footnote 3 was also deleted as it

Continued

<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.

pursuant to SR-ISE-2010-10 became operative on February 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-2010-10, 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 an effective date of February 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 February 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>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</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.

is repetitive of the amended third sentence in footnote 3 ("stocks prices below \$1.00 on the NYSE are charged \$0.0018 per share when removing liquidity.") As a result, on Flag J, footnote 3 was deleted as the reference no longer applies. However, footnote 3 was relocated to Flag D in order to further clarify it.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</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-2010-11 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-2010-11. 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>10</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>10</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-2010-11 and should be submitted on or before March 3, 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>11</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)<sup>12</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-2010-10 (the "Member Fee Filing"). The fee changes made pursuant to the Member Fee Filing became operative on February 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 February 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>13</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>11</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</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 February 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>14</sup> that the proposed rule change (SR-ISE-2010-11) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61499; File No. SR-NYSEAmex-2010-04]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rule 991 Options Communications

February 4, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 13, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 its option trading rules pertaining to its

advertising, branch officer examination requirement, and assuming customer loss policies to harmonize these policies with those of the Financial Industry Regulatory Authority ("FINRA"). The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office 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 those 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Pursuant to Rule 17d-2 under the Act, the American Stock Exchange, LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., The NASDAQ Stock Market LLC, the New York Stock Exchange, LLC, NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc. (collectively, the "Options Self Regulatory Council"), entered into an agreement dated June 5, 2008 (the "17d-2 Agreement") to allocate regulatory responsibility for common rules. The Exchange is currently in the process of recertifying this 17d-2 Agreement.

In order to continue this successful regulatory agreement, the Exchange proposes to harmonize the following option trading rules with comparable FINRA rules: NYSE Amex Rule 991, Communications to Customers and NYSE Amex Rule 1106, Prior Approval of Certain Communications to Customers.

###### Options Communications

In furtherance of the 17d-2 Agreement, and in order to maintain substantial similarity with FINRA rules, the Exchange proposes to amend NYSE Amex Rule 991, Communications to Customers, to correspond to FINRA Rule 2220, Options Communications.

Many elements of current NYSE Amex Rule 991 are identical to FINRA Rule 2220. However, FINRA 2220 contains a more comprehensive definition section and approval process for advertisements, correspondence, and institutional sales material. The Exchange believes it is in the best interest of its Members to adopt FINRA's more comprehensive requirements. To the extent that other FINRA rules are incorporated into FINRA 2220 by reference, the Exchange proposes to add such language directly into the corresponding sections of proposed Rule 991.

For instance, FINRA Rule 2357 makes the provisions of FINRA 2220 applicable to index warrants, currency index warrants and currency warrants. As stated above, the Exchange proposes to amend NYSE Amex Rule 991 to correspond to FINRA Rule 2220. Thus, to harmonize its rules with FINRA's, the Exchange proposes to amend NYSE Amex Rule 1106 to correspond to FINRA Rule 2357, so that proposed NYSE Amex Rule 1106 will make the provisions of proposed NYSE Amex Rule 991 applicable to index warrants, currency index warrants and currency warrants.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the proposed rule changes would provide NYSE Amex Members with a clearer, more consistent, and more comprehensive regulatory scheme, by harmonizing NYSE Amex rules with FINRA rules. The Exchange further notes that the proposed changes are neither novel nor controversial and are modeled on existing FINRA rules.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

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