SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67159; File No. SR-EDGX-2012-18)

June 7, 2012

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 29, 2012 the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") 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 its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet website at http://www.directedge.com, at the Exchange's principal office, and at the Public Reference Room of the Commission.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

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 the Statutory Basis for, the Proposed Rule Change

Purpose

The Exchange proposes to introduce the Message Efficiency Incentive Program ("MEIP") to its fee schedule and codify it in footnote c of the fee schedule. Under the MEIP, Members will receive standard rebates and tier rebates as provided on the EDGX fee schedule so long as the Member's average inbound message-to-trade ratio, measured monthly, is at or less than 100:1 for that month. The Exchange notes that the message-to-trade ratio is calculated by including total messages as the numerator (orders, cancels, and cancel/replace messages) and dividing it by total executions.[4] The Exchange also notes that any cancel/replace message, regardless of whether it is a partial cancel, is considered a new order. Members who do not satisfy this criteria will have their rebates reduced by $0.0001 per share, regardless of any tiers for which the Member would otherwise qualify.

[4] The Exchange notes that it counts only the first partial or complete execution resulting from an order if it is filled in parts. So, if a 1,000 share orders results in three partial executions of 400 shares, 300 shares, and 300 shares, it counts only the first execution of 400 shares toward the denominator. Thus, the Exchange counts all fills against an order as one trade for purposes of "total executions."

The Exchange notes that Members sending fewer than 1 million messages per day are exempt from MEIP. Because of a Market Maker's[5] importance in liquidity provision and their ongoing obligations in Rule 11.21(d)[6] to maintain continuous two-sided interest, Members that are registered as Market Makers[7] will be exempt from the MEIP requirements in all securities provided that a Market Maker is registered in at least 100 securities over the course of a given month and is meeting its continuous, two-sided quoting obligations in those 100 securities as provided for in Rule 11.21(d) on at least 10 consecutive trading days in the month, where the Exchange believes that 10 days represents a consistent quoting obligation from the Member.[8] Because a Member's trading activity is not segregated by market participant identifiers (MPID), the Market Making exemption applies to the parent firm and all wholly owned affiliates upon the satisfaction of the Market Maker exemption criteria by one MPID. All MPIDs that are wholly-owned affiliates are exempt from the MEIP as long as one MPID satisfies the criteria for an exemption under market making. In recognition of the value that the Exchange derives from such market making, any Member that meets the market making obligations pursuant to Rule 11.21(d) on at least 10 consecutive trading days in the month will be exempt from a MEIP rebate reduction.

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5 As defined in Rule 1.5(l).

6 Rule 11.21(d) provides that "For each security in which a Member is registered as a Market Maker, the Member shall be willing to buy and sell such security for its own account on a continuous basis during Regular Trading Hours and shall enter and maintain a two-sided trading interest ("Two-Sided Obligation") that is displayed in the Exchange's System at all times."

7 Registration requirements for Market Makers are outlined in Rule 11.20.

8 The Exchange notes that all registered Market Makers are obligated to meet continuous, two-sided quoting obligations under Rule 11.21(d) whether or not they qualify for the exemption under the MEIP.

The Exchange may exclude one or more days of data for purposes of calculating the message-to-trade ratio for a Member if the Exchange determines, in its sole discretion, that one or more Members or the Exchange experienced a bona fide systems problem.[9] Any Member seeking relief as a result of a systems problem will be required to notify the Exchange via e-mail with a description of the systems problem. The Exchange shall keep a record of all such requests and whether the request was deemed by the Exchange to be a bona fide systems problem resulting in waiving that day's activity from the calculation of the message-to-trade ratio.

The Exchange proposes to implement these amendments to its fee schedule on June 1, 2012.

Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, as 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.

The Exchange believes that the MEIP is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the MEIP will promote a more efficient marketplace and

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[9] An example of bona fide systems problem includes, but is not limited to, an Exchange systems problem that causes a Member to continually attempt to update or withdraw its orders, generating a large volume of traffic. In those cases, where the bona fide systems problem is at the Exchange, the Exchange will exclude the day's activity from the calculation of the message-to-trade ratio for all Members that were impacted by the bona fide systems problem. See Securities Exchange Act Release No. 65341 (September 14, 2011), 76 FR 58555 (September 21, 2011) (SR-NYSEAmex-2011-68) for substantially similar exclusions from their "Messages Fee."

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

enhance the trading experience of all Members by encouraging Members to more efficiently participate in the marketplace, ensuring that systems capacity/bandwidth is utilized efficiently while still encouraging the provision of liquidity in volatile, high-volume markets and provide Members with order management flexibility. Unfettered growth in bandwidth consumption can have a detrimental effect on all market participants who are potentially compelled to upgrade capacity as a result of the bandwidth usage of other participants. All Members are still free to manage their order and message flow as is consistent with their business models. However, Members who more efficiently participate by sending average monthly inbound message-to-trade ratios of equal to or less than 100:1 for that month are rewarded with the standard rebates and tiered fees provided in the fee schedule. The Exchange believes that this will promote a more efficient marketplace, encourage liquidity provision and enhance the trading experience of all Members on an ongoing basis. The Exchange notes that its technology and infrastructure are still able to handle high-volume and high-volatility situations for those Members that do not satisfy the criteria of the MEIP. The Exchange believes that the proposal is equitable and non-discriminatory in that it applies uniformly to all Members, except with respect to its Members that are registered as Market Makers who meet certain criteria, as discussed in more detail below.

The MEIP is also reasonable in that it is similar to other programs offered by equities exchanges, namely Nasdaq OMX ("Nasdaq"), NYSE, and NYSE Arca. The Exchange believes the MEIP encourages Members to avoid sending extraneous messages to the Exchange's system and thereby encourages more efficient amounts of liquidity to be added to EDGX each month. The Exchange believes that the MEIP will thus discourage trading practices that offer little benefit from liquidity posted to or routed through the EDGX book that may place unwarranted burdens on EDGX's systems. Such increased "efficient" volume lowers operational, bandwidth, and surveillance costs of the Exchange and promotes more relevant quotes, which may result in lower per share costs for all Members. The increased liquidity also benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

In addition, the rebate is also reasonable in that other exchanges likewise employ similar pricing mechanisms. For example, Nasdaq[12] and NYSE Arca[13] offer investor support programs

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12 See Nasdaq Rule 7014. Similarly, Nasdaq established an Investor Support Program ("ISP") targeting retail and institutional investor orders where firms receive a higher rebate if they meet all of the following criteria: 1) Add at least 10 million shares of liquidity per day via ISP-designated ports; 2) Maintain a ratio of orders-to-orders executed of less than 10 to 1 (counting only liquidity-providing orders and excluding certain order types) on ISP-designated ports; 3) Exceed the firm's August 2010/2011 "baseline" volume of liquidity added across all the firm's ports. For a detailed description of the Investor Support Program as originally implemented, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (SR-Nasdaq-2010-141) (notice of filing and immediate effectiveness) (the "ISP Filing"). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (SR-Nasdaq-2010-153) (notice of filing and immediate effectiveness); 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (SR-Nasdaq-2010-154) (notice of filing and immediate effectiveness); 63891 (February 11, 2011), 76 FR 9384 (February 17, 2011) (SR-Nasdaq-2011-022) (notice of filing and immediate effectiveness); and 64050 (March 8, 2011), 76 FR 13694 (March 14, 2011) (SR-Nasdaq-2011-034). See also Securities Exchange Act Release No. 65717 (November 9, 2011), 76 FR 70784 (November 15, 2011) (SR- Nasdaq-2011-150).

13 NYSE Arca also implemented investor tiers where they allow Members to earn a credit of $ 0.0032 per share for executed orders that provide liquidity to the Book for Tape A, Tape B and Tape C securities when they meet all of the following criteria on a monthly basis: 1) Maintain a ratio of cancelled orders to total orders of less than 30%; 2) Maintain a ratio of executed liquidity adding volume to total volume of greater than 80%; and 3) Firms must add liquidity that represents 0.45% or more of the total US average daily consolidated share volume ("ADV") per month (volume on days when the market closes early is excluded from the calculation of ADV). See Securities Exchange Act Release No. 64593 (June 3, 2011), 76 FR 33380 (June 8, 2011) (SR-NYSEArca-2011-34); Securities Exchange Act Release No. 66115 (January 6, 2012), 77 FR 1969 (January 12, 2012) (SR-NYSEArca-2011-101) (notice of filing and immediate effectiveness of a

and investor tiers, respectively. Such programs reward liquidity provision attributes and encourage price discovery by encouraging a low cancellation rate on liquidity-providing orders. MEIP is similar to Nasdaq's/NYSE Arca's programs in they both encourage efficient liquidity provision. It is similar to Nasdaq's Investor Support Program in that for Nasdaq members to qualify, among a firm's liquidity-providing orders, it must maintain a ratio of "orders" to "orders executed" of less than ten to one (i.e., at least one out of every ten liquidity-providing orders submitted must be executed rather than cancelled). Similarly, NYSE Arca's investor tiers require its members to maintain a ratio of cancelled orders to total orders of less than 30% and maintain a ratio of executed liquidity adding volume to total volume of greater than 80%, among other criteria. The MEIP is similar to NYSE Arca's investor tiers in that like NYSE Arca's investor tiers, the Exchange's goal is to incentivize Members to maintain low cancellation rates and provide liquidity that supports the quality of price discovery and promotes market transparency. In addition, similar to the investor tiers of NYSE Arca, the MEIP "reward[s] providers whose orders stay on the [b]ook and do not rapidly cancel a large portion of their orders placed, which makes the price discovery process more efficient and results in higher fill rates, greater depth and lower volatility. It serves to encourage customers to post orders that are more likely to be executed."[14]

The MEIP is also similar to Nasdaq's "excessive message fee", in which Nasdaq charges a per order fee for its members that make inefficient use of certain features of Nasdaq's routing

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proposed rule change replacing numerical thresholds with percentage thresholds for the Investor Tiers' volume requirements). See also Securities Exchange Act Release No. 66378 (February 10, 2012), 77 FR 9278 (February 16, 2012) (SR-NYSEArca-2012-13).

14 See Securities Exchange Act Release No. 64593 (June 3, 2011), 74 FR 33380 (June 8, 2011) (SR-NYSEArca-2011-34).

facility.[15] When Nasdaq members route to the NYSE after having their orders check the Nasdaq book, they may designate their orders as eligible for posting to the Nasdaq book after accessing available liquidity at NYSE and elsewhere, or they may designate their orders for posting the NYSE book. Nasdaq's excessive message fee applies to round lot or mixed lot orders that attempt to execute on Nasdaq for the full size of the order prior to routing, but that are designated as not eligible to post on Nasdaq ("DOTI Orders"). If a member sends an average of more than 10,000 DOTI Orders per day during the month, and the ratio between total DOTI Orders and DOTI Orders that are fully or partially executed (either at Nasdaq or NYSE) exceeds 300 to 1, then the Nasdaq member will be charged a fee of $ 0.01 for each order that exceeds the ratio.

Similar to the Exchange, Nasdaq introduced the excessive message fee to encourage more efficient liquidity provision – namely, "to address the practice of [its] members routing an order to the NYSE book through NASDAQ and quickly cancelling the order and resubmitting it at a different price if it does not execute within a short period of time. The practice offers no benefits in terms of liquidity posted to the NASDAQ book or execution or routing revenues, and could place unwarranted burdens on NASDAQ routing systems."[16] Nasdaq stated that "Members wishing to continue to use this routing strategy may do so through other means of routing to NYSE, but will be discouraged from doing so through NASDAQ systems."[17] The Exchange shares these same objectives in introducing MEIP.

The MEIP is also similar to the NYSE Amex options exchange's "Messages Fee," which promotes efficient usage of system capacity by assessing a fee against its members that enter

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15 See Securities Exchange Act Release No. 59455 (February 25, 2009), 74 FR 9457 (March 4, 2009) (SR-Nasdaq-2009-013).

16 Id.

17 Id.

excessive amounts of orders and quotes that produce little or no volume based on the ratio of quotes and orders to contracts traded. Like NYSE Amex, the Exchange believes it is in the best interest of all Members who access its markets to encourage efficient usage of capacity.[18] In addition, the MEIP is also similar to a host of other options exchanges that assess cancellation fees based on the number of order cancellations, as such high cancellations increases these market centers' costs by requiring them to spend increased amounts on systems and other hardware to process increased order traffic flow.[19]

Finally, the lower rebates offered to Members who do not satisfy the MEIP criteria allows the Exchange to recoup costs associated with the higher costs of surveillance, data, storage, bandwidth, and other infrastructure associated with higher message traffic compared to those Members with lower message traffic. The Exchange believes it to be equitable for Members to get lower rebates when their higher message traffic causes the Exchange to incur higher costs and for Members to receive higher rebates when their message traffic causes the Exchange to incur lower costs.

The Exchange believes that the proposal is allocated in a reasonable and equitable manner because it exempts Members that are registered as Market Makers that contribute to market quality by providing higher volumes of liquidity and have enhanced obligations under

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18 See Securities Exchange Act Release No. 64655 (June 13, 2011), 76 FR 35495 (June 17, 2011) (SR-NYSEAmex-2011-37); See also Securities Exchange Act Release No. 65341 (September 14, 2011), 76 FR 58555 (September 21, 2011) (SR-NYSEAmex-2011-68).

19 See Securities and Exchange Act Release No. 62744 (August 19, 2010), 75 FR 52558 (August 26, 2010) (SR-Phlx-2010-105); Securities and Exchange Act Release No. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006) (SR-Phlx-2005-92); Securities and Exchange Act Release No. 49802 (June 3, 2004), 69 FR 32391 (June 9, 2004) (SR-PCX-2004-31); Securities and Exchange Act Release No. 46189 (July 11, 2002), 67 FR 47587 (July 19, 2002) (SR-ISE-2002-16); Securities and Exchange Act Release No. 44607 (July 27, 2001), 66 FR 40757 (August 3, 2001) (SR-CBOE-2001-40).

Exchange Rule 11.21(d) to maintain fair and orderly markets and quote continuous, two-sided markets. The proposal is equitable because it provides discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that allowing Market Makers to be exempt from the MEIP will attract additional order flow and liquidity to the Exchange. This concept is similar to the structure of varying rebate schedules on other exchanges, where it is common to tie rebates to market making obligations. For example, rewarding Market Makers with better rebates tied to their market making obligations is consistent with how Supplemental Liquidity Providers ("SLPs") and Designated Market Makers ("DMMs") are rebated on NYSE[20] and Lead Market Makers ("LMMs") are rebated on NYSE Arca.[21] NYSE offers rebates to Designated Market Makers ranging from $0.0004 per share to $0.0035 per share and to Supplemental Liquidity Providers ranging from $0.0010 per share to $0.0024 per share. NYSE Arca offers rebates to its market makers ranging from $0.001 per share to $0.0015 per share and to its Lead Market Makers ranging from $0.004 per share to $0.0045 per share. In addition, the NYSE Amex's messages to contracts traded ratio fee allows its market makers to have incentives, but incorporate a higher level of message traffic before its fees take effect. Like the Exchange, NYSE Amex felt that the "higher level of free message traffic [was] appropriate due to the quoting obligations incurred by market makers and their importance as liquidity providers in the options market."[22] In addition, Members that send less than 1 million messages/day are

[20] See NYSE Price List 2012.

[21] See NYSE Arca Equities, Inc. Schedule of Fees and Charges for Exchange Services.

[22] See Securities Exchange Act Release No. 64655 (June 13, 2011), 76 FR 35495 (June 17, 2011) (SR-NYSEAmex-2011-37).

exempt from this reduction in rebate under the MEIP as well. The Exchange believes this to be equitable and reasonable since those Members do not have a large cumulative effect on the Exchange's message traffic and thus the Exchange's operational, surveillance, and administrative costs are lower for those Members than those Members with higher message traffic.

Thus, the Exchange believes that the MEIP's fees among its Members are uniform except with respect to reasonable and well-established distinctions with respect to market making and Members with lower message traffic (those that send less than 1 million messages/day). These distinctions or analogous versions of them have been previously filed with the Commission.[23]

The Exchange also 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 proposed rule change reflects a competitive pricing structure designed to encourage market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members, except with respect to Market Makers for the reasons cited above. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

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.

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[23] Id. See also supra notes 13-15, 18-21 (NYSE Amex assesses a messages fee if the certain of its members exceed one billion quotes and/or orders ("messages"); Nasdaq assesses its excessive message fee if a member sends an average of more than 10,000 DOTI Orders per day during the month, and the ratio between total DOTI Orders and DOTI Orders that are fully or partially executed (either at Nasdaq or NYSE) exceeds 300 to 1.)

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[24] and Rule 19b-4(f)(2)[25] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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. Please include File Number SR-EDGX-2012-18 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.

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24 15 U.S.C. 78s(b)(3)(A).

25 17 CFR 19b-4(f)(2).

All submissions should refer to File Number SR-EDGX-2012-18. 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 website (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 website 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 10:00 a.m. and 3:00 p.m. Copies of the 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 available publicly. All submissions should refer to File Number SR-EDGX-2012-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill
Deputy Secretary

[26] 17 CFR 200.30-3(a)(12).