

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.<sup>23</sup>

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.

#### *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.

<sup>23</sup> *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.)

### **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<sup>24</sup> and Rule 19b–4(f)(2)<sup>25</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–EDGA–2012–19 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–EDGA–2012–19. This file number should be included on the subject line if email 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, 100 F Street NE., Washington, DC 20549, on official business days between the hours of

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 19b–4(f)(2).

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–EDGA–2012–19 and should be submitted on or before July 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–14343 Filed 6–12–12; 8:45 am]

**BILLING CODE 8011–01–P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–67158; File No. SR–EDGX–2012–19]

### **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**

June 7, 2012.

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 31, 2012 the EDGX Exchange, Inc. (the "Exchange" or "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<sup>3</sup> 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 Web site at <http://>

<sup>26</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> 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.

[www.directedge.com](http://www.directedge.com), at the Exchange's principal office, and at the Public Reference Room of the Commission.

## 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 amend the percentage associated with the "added liquidity" to "removed liquidity" ratio in part (ii) of the Investor Tier (Footnote 13) from 70% to 60% and pluralize "Member." Therefore, Footnote 13, will read, "Members can qualify for an Investor Tier and be provided a rebate of \$0.0030 per share if they meet the following criteria: (i) On a daily basis, measured monthly, posts an ADV of at least 8 million shares on EDGX where added flags are defined as B, HA, V, Y, MM, 3, or 4; (ii) have an "added liquidity" to "removed liquidity" ratio of at least 60% where added flags are defined as B, HA, V, Y, MM, 3, or 4 and removal flags are defined as BB, MT, N, W, PI, or 6; and (iii) have a message-to-trade ratio of less than 6:1."

#### Codification of Late Fees

Currently, the Exchange charges additional fees to Members that fail to pay all dues, fees, assessments and charges owed to the Exchange by the prescribed due date. Exchange Rule 15.1(a) states that the Exchange may prescribe such reasonable dues, fees, assessments or other charges as it may, in the Exchange discretion, deem appropriate. In addition, paragraph 13 of the Exchange's User Agreement,<sup>4</sup> which is signed by all Members as part of their membership in the Exchange, also provides that the Member agrees to pay the Exchange a late charge of 1% per month on all past due amounts that

are not the subject of a legitimate and bona fide dispute. The Exchange proposes to codify this language in Footnote d on its fee schedule stating that the Exchange will assess a charge of 1% per month on the past due portion of the balance on a Member's account that is past due. This fee will begin to accrue on a daily basis for items not paid within the 30 day payment terms until the item is paid in full. Late fees incurred will be included as line items on subsequent invoices.

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,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>6</sup> 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 proposes to amend the percentage associated with the "added liquidity" to "removed liquidity" ratio in part (ii) of the Investor Tier (Footnote 13) from 70% to 60% because the Exchange believes that a ratio of at least 60% represents a more appropriate criterion for Members to qualify for a rebate of \$0.0030 per share associated with the Investor Tier. The Exchange believes the proposed ratio incentivizes Members to direct a high quality order flow to the Exchange because the Exchange believes that such high quality liquidity provisions will encourage price discovery and market transparency and improve investor protection by encouraging growth in liquidity. In addition, the Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all Members.

In order to provide additional transparency to Members, the Exchange proposes to codify its existing policy regarding late fees in Footnote d of the fee schedule. The Exchange believes that by including proposed Footnote d it will help to promote market transparency and improve investor protection by displaying the Exchange's policy regarding late fees to Members on its fee schedule along with the Exchange's other rebates and charges. The Exchange also notes that it is equitable and reasonable to charge a Member a late fee on past due balances because it offsets administrative and

collection costs associated with past due accounts and incentivizes Members to pay on time in accordance with the terms of the Member's User Agreement. In addition, a late fee of 1% is reasonable because it is in line with the late fees assessed by other exchanges.<sup>7</sup> The Exchange believes that the proposal is non-discriminatory because it applies to all Members.

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 incent 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. 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.

### 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<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> 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

<sup>7</sup> See also, the late fees listed on the Chicago Board Options Exchange's fee schedule at: <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>; and NASDAQ Rule 7032 regarding late fees.

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

<sup>9</sup> 17 CFR 19b-4(f)(2).

<sup>4</sup> See the User Agreement posted to the Exchange's Web site at: <http://www.directedge.com/Portals/0/docs/MembDocs/EDGX%20Complete%20Exch%20Appl%201%20%28V%202.0%29.pdf>.

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

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

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2012-19 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-EDGX-2012-19. This file number should be included on the subject line if email 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, 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-2012-19 and should be submitted on or before July 5, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-14341 Filed 6-12-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67154; File No. SR-NYSE-2012-10]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Amending NYSE Rule 107B To Add a Class of Supplemental Liquidity Providers That Are Registered as Market Makers at the Exchange

June 7, 2012.

#### I. Introduction

On April 17, 2012, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NYSE Rule 107B to add a class of Supplemental Liquidity Providers ("SLP") that are registered as market makers at the Exchange. The proposed rule change was published for comment in the **Federal Register** on April 23, 2012.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

NYSE Rule 107B was adopted as a pilot program in October 2008 and established a new class of off-floor market participants referred to as Supplemental Liquidity Providers or "SLPs."<sup>4</sup> Approved Exchange member organizations are eligible to be an SLP. SLPs supplement the liquidity provided by Designated Market Makers ("DMM"). SLPs have monthly quoting requirements that may qualify them to receive SLP rebates, which are larger than the general rebate available to non-SLP market participants.<sup>5</sup>

<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>3</sup> Securities Exchange Act Release No. 66821 (April 17, 2012), 77 FR 24239 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR-NYSE-2008-108). The pilot is currently scheduled to end on July 31, 2012.

<sup>5</sup> NYSE Rule 107B(a) requires that an SLP maintain a bid and/or an offer at the national best bid ("NBB") or national best offer ("NBO")

To qualify as an SLP under NYSE Rule 107B(c), a member organization is subject to a number of conditions, including adequate trading infrastructure to support SLP trading activity, quoting and volume performance that demonstrates an ability to meet the 10% ADV requirement, and use of specified SLP mnemonics. In addition, the business unit of the member organization acting as an SLP must enter proprietary orders only and have adequate information barriers between the SLP unit and any of the member organization's customer, research, and investment-banking business. Pursuant to NYSE Rule 107B(h)(2)(A), a DMM may also be an SLP, but not in the same securities in which it is registered as a DMM.

##### *Proposed SLP Market Makers*

The Exchange proposes to amend NYSE Rule 107B to add a category of SLPs that would be registered as market makers at the Exchange. As proposed, the term "SLP" would refer to member organizations that provide supplemental liquidity and there would be two classes of SLP. The existing SLP member organizations and associated requirements would continue unchanged and would be referred to as "SLP-Prop."

The proposed new class of SLP would be referred to as "SLMM". SLMMs would have differing qualification requirements and increased regulatory obligations as compared to SLP-Props, but would otherwise be subject to the existing SLP program.

Under the proposal, an SLP can choose to be either an SLP-Prop or an SLMM. The proposed SLMMs would have different qualification requirements, specified regulatory obligations, expanded entry of order requirements, and a security-by-security withdrawal ability. SLP-Props and SLMMs would be subject to the same application and overall program withdrawal process, ADV and quoting requirements, manner by which SLP securities are assigned, and non-regulatory penalties.

To be approved as an SLMM, an SLMM must meet specified regulatory obligations, which are set forth in proposed NYSE Rule 107B(d). Failure to comply with these regulatory obligations could result in disciplinary

averaging at least 10% of the trading day for each assigned security. In addition, an SLP must provide an average daily volume ("ADV") of more than 10 million shares for all assigned SLP securities on a monthly basis. Meeting this volume requirement will enable an SLP to receive the basic SLP rebate (currently \$0.0020 per executed share) on security-by-security basis and to maintain their SLP status.