

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the filing.<sup>9</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such time is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can implement the enhancements once they are ready from a technology perspective. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as it will clarify that the delayed implementation of the FBMS will be effective and operative immediately. In addition, because the proposal only delays the implementation date of the FBMS and does not make any additional changes to the FBMS itself, it does not raise any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection

of investors; or (iii) 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-Phlx-2013-83 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-Phlx-2013-83. 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 such 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-Phlx-2013-83 and should be submitted on or before September 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-70143; File No. SR-NASDAQ-2013-098]**

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Waive the Subscription Fee for New Subscribers to Latency Optics for a Limited Period**

August 8, 2013.

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 August 01, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 the Substance of the Proposed Rule Change**

NASDAQ proposes to adopt a time-limited waiver of the monthly subscription fee for new subscribers to the Latency Optics add-on service to QView under Rule 7058(b). NASDAQ will offer the fee waiver to new subscriptions for the month of August 2013. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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, NASDAQ 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

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

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</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.

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 Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

NASDAQ is proposing to waive subscription fees for the Latency Optics add on service to QView under Rule 7058(b) for new subscribers to the service during the month of August 2013. Latency Optics provides a subscribing member firm with real-time order latency and analytical tools to measure the historical latency of the member firm's order messages sent to and from the NASDAQ Market Center through the member firm's OUCH ports and received on ITCH ports. NASDAQ adopted Latency Optics in February 2013, and offered the service at no cost to subscribers from February 4, 2013 to April 1, 2013.<sup>3</sup> There have been no new subscribers since the prior free period ended on April 1, so NASDAQ is now proposing an additional free period to encourage new customers to subscribe. NASDAQ has also added new functionality to the service, including more in depth order-level data and enhanced export capabilities. NASDAQ is offering the service at no cost to new subscribers for the month of August 2013 to encourage member firms that have not yet subscribed to subscribe. Normal fees will apply to all subscribers, new and existing, thereafter. In amending the rule text, NASDAQ is deleting references to the expired free period and timing of the service's launch.

**2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>4</sup> in general, and with Sections 6(b)(4) and (5)<sup>5</sup> of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed fee waiver is reasonable because it will result in a reduction of

fees during the month of August 2013 for new subscribers, thereby reducing the fees that they will ultimately pay for the service this year. The proposed fee waiver is equitable and not unfairly discriminatory because, as discussed above, all existing subscribers benefitted from a similar fee waiver that was in effect earlier this year, and there have been no new subscribers since April 1, 2013. Accordingly, existing subscribers will not be disadvantaged by the introduction of a fee waiver for new subscribers. NASDAQ further notes that it has enhanced the service and believes that more member firms would find it beneficial once subscribed. Moreover, as more subscribers sign up for the service, NASDAQ is able to spread the fixed costs of the service among a larger number of subscribers, which in turn reduces the likelihood of future fee increases in response to future increases in fixed costs. Accordingly, NASDAQ believes that efforts to garner additional subscribers for the service are equitable because they may be beneficial to all subscribers.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Waiver of the subscription fee for new subscribers will promote broader subscription to the service, thus allowing NASDAQ to allocate the fixed costs of the subscription among a larger pool of subscribers and reduce the likelihood of future fee increases as the result of any future increases in fixed costs. In addition, the waiver will result in lower fees, which are generally seen as indicative of the presence of competition. Finally, by providing a service that allows members to evaluate latency of order messages, NASDAQ hopes to enhance its competitiveness vis-à-vis other trading centers.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>6</sup> and paragraph (f)(2)<sup>7</sup> of

Rule 19b-4, thereunder. At any time within 60 days of the filing of the 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-NASDAQ-2013-098 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-NASDAQ-2013-098. 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 such filing also will be available for inspection and copying at the principal offices of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

<sup>3</sup> Securities Exchange Act Release No. 68617 (January 10, 2013), 78 FR 3480 (January 16, 2013)(SR-NASDAQ-2013-005).

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

<sup>5</sup> 15 U.S.C. 78f(b)(4), (5).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–098, and should be submitted on or before September 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70135; File No. SR–EDGA–2013–19]

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

August 8, 2013.

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 July 30, 2013, EDGA Exchange, Inc. (the “Exchange” or “EDGA”) 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> pursuant to EDGA Rule 15.1(a) and (c) (“Fee Schedule”) to increase the fee charged from \$0.0017 per share to \$0.0050 per share for orders that yield Flag RW, which routes to CBOE Stock Exchange, LLC (“CBSX”) and adds liquidity. All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at

[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

###### 1. Purpose

The Exchange proposes to amend its Fee Schedule to increase the fee charged from \$0.0017 per share to \$0.0050 per share for orders that yield Flag RW, which routes to CBSX and adds liquidity.

In securities priced at or above \$1.00, the Exchange currently assesses a fee of \$0.0017 per share for Members' orders that yield Flag RW. The Exchange proposes to amend its Fee Schedule to increase this fee to \$0.0050 per share for Members' orders that yield Flag RW. The proposed change represents a pass through of the rate of \$0.0050 that Direct Edge ECN LLC (d/b/a DE Route) (“DE Route”), the Exchange's affiliated routing broker-dealer, is charged for routing orders in select symbols to CBSX when it does not qualify for a volume tiered discount.<sup>4</sup> DE Route passes through this rate on CBSX to the Exchange and the Exchange, in turn, passes through this rate to its Members.

The Exchange notes that the proposed change is in response to CBSX's July 2013 fee change where CBSX exempted select symbols out of its standard fee structure.<sup>5</sup> Instead, CBSX amended its fee schedule to assess a fee of \$0.0050 per share for maker transactions in such symbols and a rebate of \$0.0045 per

share for taker transactions in such symbols.<sup>6</sup> The Exchange notes that its internal billing system is unable to assign different rates by symbols. Therefore, due to internal system limitations and to protect the Exchange from potentially significant financial loss for orders routed to CBSX in the select symbols, it is necessary that the Exchange assess a flat fee of \$0.0050 per share for all orders that yield Flag RW. The Exchange further notes that routing through DE Route is voluntary and that Members would continue to be able to send orders in symbols that CBSX does not subject to the \$0.0050 per share fee directly to CBSX if they so choose.

###### Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on August 1, 2013.

###### 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, 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.

###### Fee Change for Flag RW

The Exchange believes that its proposal to increase the charge for Members' orders that yield Flag RW from \$0.0017 to \$0.0050 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange is passing through the higher add charge levied by CBSX for orders that the Exchange routes to CBSX through DE Route. Prior to CBSX's July 2013 fee change, CBSX charged DE Route a fee of \$0.0017 per share for orders yielding Flag RW, which DE Route passed through to the Exchange and the Exchange passed through to its Members. In July 2013, CBSX increased the rate it charges its customers, such as DE Route, from a charge of \$0.0017 per share to a charge of \$0.0050 per share for orders in select symbols that are routed to CBSX.<sup>9</sup> Therefore, the Exchange believes that the proposed change in Flag RW from a fee of \$0.0017

<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.

<sup>3</sup> “Member” is defined as “any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act.” EDGA Rule 1.5(n).

<sup>4</sup> The Exchange notes that to the extent DE Route does or does not achieve any volume tiered discount on CBSX, its rate for Flag RW will not change.

<sup>5</sup> Securities Exchange Act Release No. 69916 (July 2, 2013), 78 FR 41158 (July 9, 2013) (SR–CBOE–2013–065). CBSX lists these select symbols in footnote 6 to its fee schedule. CBSX, CBOE Stock Exchange Fees Schedule, available at, <http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf> (last visited July 23, 2013).

<sup>6</sup> CBSX, CBOE Stock Exchange Fees Schedule, available at, <http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf> (last visited July 23, 2013).

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

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

<sup>9</sup> Securities Exchange Act Release No. 69916 (July 2, 2013), 78 FR 41158 (July 9, 2013) (SR–CBOE–2013–065).