of the Act,[5] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would streamline the Price List with respect to determining the particular credit applicable to non-Floor broker transactions that are not otherwise specified in the Price List. Specifically, the Exchange believes that eliminating the step-up rate would simplify the method by which member organizations are charged for non-Floor broker transactions. In addition, the criteria for non-Floor broker transactions are transparent and quantitative. The Exchange also believes that eliminating the step-up rate is reasonable because member organizations will be charged the same fee that was previously charged by Exchange for all transactions that are not otherwise specified in the Price List.[6] The Exchange believes that the proposed rule change is reasonable because eliminating the step-up rate would remove a pricing tier from the Price List that member organizations have generally not utilized. The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to charge $0.0023 for non-Floor broker transactions that take liquidity and $0.0022 for Floor broker transactions that take liquidity, because Floor brokers have slower access to the Exchange via handheld technology, and Floor brokers are prohibited from routing directly to other market centers from handheld devices, which prevents them from accessing any associated pricing opportunities that might exist at those away markets.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

[5] 15 U.S.C. 78f(b)(4).

[6] *See* Securities Exchange Act Release No. 63642 (January 4, 2011), 76 FR 1653 (January 11, 2011) (SR–NYSE–2010–87).

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.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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.* Please include File Number SR–NYSE–2012–41 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–NYSE–2012–41. 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 a.m. and 3 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–NYSE–2012–41 and should be submitted on or before October 5, 2012.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22639 Filed 9–13–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67817; File No. SR–EDGA–2012–39]

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

September 10, 2012.

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 August 30, 2012 the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items

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

[2] 17 CFR 240.19b–4.

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 EDGA Rule 15.1(a) and (c). 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 *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

With respect to the category of securities priced at or above $1.00, when Members add liquidity, the Exchange currently offers a rebate of $0.0003 per share. Alternatively, when Members remove liquidity, the Exchange currently charges a fee of $0.0007 per share. The Exchange proposes to amend the fee structure (and related flags) set forth in the fee schedule to charge Members a fee of $0.0006 per share for orders that add liquidity and to offer Members a rebate of $0.0004 per share for orders that remove liquidity.

The Exchange proposes to codify at the top of its fee schedule the premise that it uses footnotes to provide further explanatory text or, where annotated to flags, to indicate variable rate changes, provided the conditions in the footnote are met. In connection with this premise, the Exchange proposes to delete Footnote 6 that is appended to Flag M to also signify that a rate change is not signaled.[4] In addition, the Exchange proposes to delete Footnote 17 from Flag PA since a rate change is not indicated.[5]

The Exchange proposes to make conforming changes to the relevant flags, as described below, for orders that add liquidity to the EDGA book. Specifically, the Exchange proposes to assess a charge of $0.0006 per share for orders that add liquidity and yield the following flags: Flag B for orders that add liquidity to the EDGA book in Tape B securities; Flag V for orders that add liquidity to the EDGA book in Tape A securities; Flag Y for orders that add liquidity to the EDGA book in Tape C securities; Flag 3 for orders that add liquidity in the pre- and post-market trading sessions in Tapes A and C securities; and Flag 4 for orders that add liquidity in the pre- and post-market trading sessions in Tape B securities.

Similarly, the Exchange proposes to make conforming changes to the relevant flags, as described below, for orders that remove liquidity from the EDGA book. Specifically, the Exchange proposes to offer a rebate of $0.0004 per share for orders that remove liquidity and yield the following flags: Flag N for orders that remove liquidity from the EDGA book in Tape C securities; Flag W for orders that remove liquidity from the EDGA book in Tape A securities; Flag 6 for orders that remove liquidity in the pre- and post-market trading sessions in securities on all Tapes; Flag BB for orders that remove liquidity from the EDGA book in Tape B securities; and Flag XR for orders that remove liquidity from EDGA using eligible routing strategies.

The Exchange also proposes to modify the charges assessed for the flags associated with internalization, which occurs when the one Member presents two orders to the Exchange separately and not in a paired manner, and one order is inadvertently matched with the other order.[6] Accordingly, for Flags EA and ER, the Exchange proposes to decrease the fee assessed from $0.0002 per share to $0.0001 per share for orders that add or remove liquidity through internalization. Similarly, for Flag 5, the Exchange proposes to decrease the fee assessed from $0.0002 per share to $0.0001 per share for internalization, pre-and post-market, per side.

The Exchange proposes to offer Members a rebate of $0.0004 per share for Flag CR for orders that remove liquidity from EDGA using eligible routing strategies. The Exchange formerly did not assess a charge for Flag CR.

The Exchange proposes to offer Members a rebate of $0.0004 per share for Flag PR for orders that remove liquidity from EDGA using eligible routing strategies. The Exchange formerly did not assess a charge for Flag PR.

The Exchange proposes to charge Members a fee of $0.0008 per share for Flag PA for orders that add liquidity using the Mid Point Routing Strategy (''RMPT''). The Exchange formerly did not assess a charge for Flag PA.

The Exchange proposes to delete Flag RM from the fee schedule. Accordingly, Members that route to the Chicago Stock Exchange (the ''CHX'') will be assessed the default charge for routing liquidity of $0.0029 per share as represented by Flag X.

Currently, the first paragraph of Footnote 4 on the Exchange's fee schedule provides for a rebate of $0.0004 per share for Flags B, V, Y, 3 and 4 if a Member, on a daily basis, measured monthly, posts more than 1% of the Total Consolidated Volume (''TCV'') in Average Daily Volume (''ADV'') on EDGA, including non-displayed orders that add liquidity. The Exchange proposes to assess a charge of $0.0005 per share. The proposed change represents a slightly lower charge (by $0.0001) if a Member meets the requirements of the first paragraph of Footnote 4 on the Exchange's fee schedule. The lower charge (by $0.0001) corresponds to the $0.0001 higher rebate on the current EDGA fee schedule if a tier is met and results from the Exchange's shift from a ''maker/taker'' model to a ''taker/maker'' model. Thus, Members will now be assessed a slightly lower charge instead of a slightly higher rebate for meeting the conditions in the first paragraph of Footnote 4.

Currently, the second paragraph of Footnote 4 on the Exchange's fee schedule provides for a rebate of $0.0004 per share if a Member, on a daily basis, measured monthly, posts more than .25% of the TCV in average daily volume on EDGA. The Exchange proposes to assess a charge of $0.0005 per share. The proposed change represents a slightly lower charge (by $0.0001) if a Member meets the requirements of the second paragraph of Footnote 4 on the Exchange's fee schedule. The lower charge (by $0.0001)

[3] As defined in Exchange Rule 1.5(n).

[4] The Exchange notes that the volume from Flag M counts toward the tier in Footnote 6, which changes the rate charged on Flag U.

[5] The Exchange notes that the volume from Flag PA counts toward the tier in Footnote 17, which changes the rate charged on Flags PT and PX.

[6] *See* Exchange Rule 12.2 regarding fictitious trading.

corresponds to the $0.0001 higher rebate on the current EDGA fee schedule if a tier is met and results from the Exchange's shift from a ''maker/taker'' model to a ''taker/maker'' model. Thus, Members will now be assessed a slightly lower charge instead of a slightly higher rebate for meeting the conditions in the second paragraph of Footnote 4.

The Exchange proposes to append Footnote 7 to Flag C, where a Member posts an average daily volume of 25,000 shares to NASDAQ OMX BX, Inc. (the ''BX''), which yields Flag RB, then the Exchange will increase the Member's rebate from $0.0005 per share to $0.0014 per share. The Exchange notes that this is a pass-through of the rebate that BX offers to its customers that remove greater than 25,000 shares of liquidity per day on its exchange.[7]

The Exchange proposes to delete, in its entirety, Footnote 18 on the Exchange's fee schedule. Footnote 18 states that a Member may qualify for a rebate of $0.0005 per share on their displayed shares (Flags B, V, Y, 3 and 4) for liquidity added to EDGA if a Member, on a daily basis, measured monthly, posts at least 0.10% of the TCV in ADV more than their July 2012 ADV added to EDGA. Accordingly, the Exchange proposes to delete Footnote 18 that is appended to Flags B, V, Y, 3 and 4.

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

Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, as the proposed rule changes are designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's Members and other persons using its facilities.

The Exchange believes that its proposal to amend the fee structure (and related add Flags B, V, Y, 3 and 4, and remove Flags N, W, 6, BB and XR) set forth in the fee schedule to charge Members a fee of $0.0006 per share for orders that add liquidity and to offer Members a rebate of $0.0004 per share for orders that remove liquidity represents an equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities because it allows the Exchange to compete with other market centers. Accordingly, as the Exchange shifts from a ''maker/taker'' model to a ''taker/maker'' model, the Exchange believes it will incentivize its Members to remove liquidity from the Exchange.[10] By further incentivizing removers of liquidity by offering higher rebates, the Exchange believes it will attract a higher quality of marketable liquidity to the Exchange. This will incent liquidity providers to add liquidity to the Exchange and thus contribute to price discovery. In addition, the Exchange believes a spread of $0.0002 per share between adding and removing liquidity represents an equitable allocation of reasonable dues, fees, and other charges because it is competitive with other exchanges' spreads for adding and removing liquidity.[11] Furthermore, the Exchange will use the revenue generated from the spread of $0.0002 per share to offset its administrative and infrastructure costs associated with operating a national securities exchange. Lastly, the Exchange believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to modify the fees assessed for the internalization flags (Flags EA, ER and 5) to $0.0001 per share, per side, represents an equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities because it is consistent with the Exchange's proposed taker/maker spread of $0.0002 per share for adding and removing liquidity (the proposed charge for adding liquidity is $0.0006 per share and the proposed rebate for removing liquidity is $0.0004 per share).[12] Therefore, the total net amount equals $0.0002 per share, which represents an internalization rate that is not more favorable than the prevailing taker/maker spread of $0.0002 per share. In addition, EDGA also has a proposed tiered rate in Footnote 4 for adding liquidity of $0.0005 per share, which yields a spread of $0.0001 per share for Members that achieve the tiered pricing. Members who internalize will be charged $0.0001 per side of an execution (total of $0.0002 per share) which is not more favorable than the taker/maker spread for capturing the proposed tiered rate. Lastly, the Exchange believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to offer a rebate of $0.0004 per share for Flags CR and PR represents an equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities because the proposed change will result in a consistent rebate of $0.0004 for all flags that remove liquidity from the EDGA book. Lastly, the Exchange believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to assess a charge of $0.0008 per share for orders that yield Flag PA, which describes a type of non-displayed order that adds liquidity using RMPT, represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because a rate of $0.0008 per share is within the range of the prevailing rates for other forms of non-displayed order types that add liquidity (*e.g.,* the Exchange assesses a charge of $0.0010 per share for Flags HA and HR), but more than the default charge of $0.0006 per share for adding displayed liquidity on EDGA. In addition, the Exchange believes that its proposed rate of $0.0008 per share for Flag PA is consistent with the Exchange's overall pricing philosophy of encouraging displayed liquidity. The Exchange rewards Members for displaying liquidity because displayed liquidity is a public good that benefits investors and traders generally by providing greater price transparency and enhancing public price discovery, which ultimately lead to substantial reductions in transaction costs.[13]

[7] *See* NASDAQ OMX BX Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.*

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] As a result of the shift from ''maker/taker'' to ''taker/maker'' model, the Exchange notes that Flag DM remains at $0.0005 per share compared to the displayed liquidity charge of $0.0006 for liquidity providers. The Exchange believes that this result is reasonable, equitable and non-discriminatory because in a taker/maker model, it is more valuable to have a higher order book priority in order to more likely interact with a liquidity remover and obtain a quicker execution. Therefore, orders that have a higher priority in the order book (displayed orders) will be charged more than orders of lower priority (e.g., Flag DM).

[11] *See* BATS BYX Exchange Fee Schedule where the spread between adding displayed liquidity and removing liquidity is $0.0001 per share, *http://batstrading.com/resources/regulation/rule_book/BYX_Fee_Schedule.pdf.*

[12] See Securities Exchange Release No. 64393 (May 4, 2011), 76 FR 27370 (May 11, 2011) (SR-EDGA–2011–14) (describing the Exchange's representation that it will continue to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread).

[13] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37516 (June 29, 2005); see also Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577, 10584 n. 53 (February 28, 2000) (SR-NYSE–99–48) (citing academic studies finding that the required display

Furthermore, compared to Flag HA (charge of $0.0010 per share), routing an order to more destinations using Flag PA can lead to a potentially lower average rate for Direct Edge ECN LLC d/b/a DE Route (''DE Route''), the Exchange's affiliated routing broker/dealer, as there is more of a likelihood of an execution at a ''low'' cost destination with higher rebates/lower fees. Accordingly, because the RMPT routing strategy routes to and accesses a variety of low cost destinations, the Exchange is able to pass back much of the cost savings it receives from routing to other destinations (via DE Route) to Members in the form of lower hidden order charges compared to Flag HA. Lastly, the Exchange believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Exchange Rule 11.9(b)(3) defines the ''System routing table'' as the proprietary process for determining the specific trading venues to which the System [14] routes orders and the order in which the System routes to them. Specifically, the Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The Exchange proposes to delete the CHX as a posting destination on the System routing table. The Exchange previously charged no fee nor assessed a rebate to its Members when DE Route routed to the CHX. This was a pass through by the Exchange of the no rebate/fee provided to DE Route by CHX when liquidity was added to CHX. Since the CHX is no longer on the System routing table, the Exchange proposes to delete Flag RM from the Exchange's fee schedule. The Exchange notes that it will continue to comply with its obligations under Regulation NMS; however, it will not continue to offer Flag RM as a routing strategy to post liquidity to the CHX. Rather, the Exchange will now pass back Flag X as the standard default routing flag should an order be routed to the CHX as a result of the Exchange's Regulation NMS obligations. The Exchange believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to replace the rebate of $0.0004 per share with a charge of $0.0005 per share for posting liquidity to EDGA as it relates to the calculation of TCV in both paragraphs of Footnote 4 on the Exchange's fee schedule represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because the proposed change represents a slightly lower charge (by $0.0001) compared to the default charge for adding liquidity (of $0.0006) if a Member meets the requirements of the first or second paragraphs of Footnote 4 on the Exchange's fee schedule. The lower charge (by $0.0001) corresponds to the $0.0001 higher rebate on the current schedule if a tier is met and results from the Exchange's shift from a ''maker/taker'' model to a ''taker/maker'' model. Thus, Members will now be assessed a slightly lower charge instead of a slightly higher rebate for meeting the conditions in the first or second paragraphs of Footnote 4.

The Exchange also believes that charging Members a lower rate for achieving volume tiers in Footnote 4 will incentivize liquidity. Such increased volumes increase potential revenue to the Exchange, and allows the Exchange to spread its administrative and infrastructure costs over a greater number of shares, which results in lower per share costs. The Exchange may then pass on these savings to Members in the form of lower charges. The increased liquidity also benefits all investors by deepening EDGA'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. Volume-based discounts such as these have been widely adopted in the cash equities markets, and are equitable because volume-based discounts are open to all Members on an equal basis and provide 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 process. Lastly, the Exchange believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to offer its Members a higher rebate for Flag C where Members achieve a volume threshold on the BX [15] represents an equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities because the Exchange passes through to Members the higher rebate that the Exchange earns through DE Route, the Exchange's routing broker-dealer. The Exchange believes that it is equitable and reasonable to pass through rates and rebates for orders routed to other exchanges to its Members. The Exchange also notes that routing through DE Route is voluntary. In addition, volume-based rebates such as these have been widely adopted in the cash equities markets, and are equitable because volume-based rebates are open to all Members on an equal basis and provide 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 process. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

In addition, the proposal to annotate footnote 7 to Flag C, delete Footnote 17 from Flag PA and delete Footnote 6 from Flag M is consistent with the Exchange's proposal to add language to the top of its fee schedule to state that it uses footnotes to provide further explanatory text, or where annotated to flags, to indicate variable rate changes, provided the conditions in the footnote are met. This provides additional transparency to Members when reading the fee schedule. The Exchange believes this amendment supports the Exchange's efforts to achieve consistent application among the flags on the fee schedule. In addition, these amendments support the Exchange's efforts to annotate flags with footnotes to signify a potential rate change, rather than annotating every flag to denote which flags contribute towards the volume threshold and/or conditions necessary to achieve a potential rate change. The Exchange also believes that these proposed amendments are non-discriminatory because they apply to all Members.

The Exchange believes that its proposal to delete Footnote 18 on the Exchange's fee schedule represents an equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities because it is consistent with the Exchange's shift from a ''maker/taker'' model to a ''taker/maker'' model. The Exchange introduced the Step Up tier to reward higher liquidity provision

of customer limit orders, by providing greater price transparency and enhancing public price discovery, led to substantial reductions in transaction costs for both retail and institutional investors).

[14] See Exchange Rule 1.5(cc).

[15] *See* NASDAQ OMX BX Price List—Trading & Connectivity, *http://nasdaqtrader.com/Trader.aspx?id=bx_pricing* (providing for a rebate of $0.0014 per share for MPIDs removing greater than 3.5 million shares per day or adding greater than 25,000 shares per day).

commitments by Members.[16] Accordingly, it appears contradictory to incentivize removing liquidity and simultaneously offer tiered savings for adding liquidity beyond a designated threshold each month. The Exchange's proposal to delete Footnote 18 supports the Exchange's efforts to achieve consistent application among the flags and tiers on the fee schedule and provide transparency for its Members. Lastly, the Exchange believes that the proposed amendment is non-discriminatory because it applies uniformly 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[17] and Rule 19b–4(f)(2)[18] 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. Please include File Number* SR–EDGA–2012–39 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–2012–39. 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–EDGA–2012–39 and should be submitted on or before October 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22642 Filed 9–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67819; File No. SR–EDGA–2012–40]

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

September 10, 2012.

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 August 31, 2012 the EDGA Exchange, Inc. (the ''Exchange'' or the ''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[3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). 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 *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

---

[16] *See* Securities Exchange Act Release No. 67607 (August 7, 2012), 77 FR 48188 (August 13, 2012) (SR–EDGA–2012–35) (introducing the Step Up Tier).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).