

Exchange charges to ETP Holders with the rate that the Exchange is charged by the NYSE. Accordingly, the Exchange is proposing this increase so that the rate it charges to ETP Holders reflects the rate that the Exchange is charged by the NYSE. In addition, the proposed changes are equitable and not unfairly discriminatory because the fee increases apply uniformly across pricing tiers and all similarly situated ETP Holders would be subject to the same fee structure.

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.

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)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

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-NYSEArca-2012-110 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-NYSEArca-2012-110. 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-NYSEArca-2012-110 and should be submitted on or before November 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67981; File No. SR-EDGX-2012-45]

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

October 4, 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 October 1, 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 Members³ of the Exchange pursuant to EDGX Rule 15.1(a) and (c). Text of the proposed rule change is attached as Exhibit 5 at <http://www.directedge.com/Regulation/ExchangeRuleFilings/EDGX.aspx>.

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.

¹⁶ 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).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Footnote 12 to the Exchange's fee schedule states that a removal rate of \$0.0029 per share applies where a Market Participant Identifier's ("MPID") add liquidity ratio is equal to or greater than 10%. The add liquidity ratio is defined as "added" flags/("added" flags + "removal" flags) × 100, where added flags are defined as Flags B, HA, V, Y, MM, RP, 3, or 4 and removal flags are defined as Flags BB, MT, N, W, PI, PR, or 6. Where a Member does not meet the add liquidity ratio of at least 10%, then the Exchange will charge the default removal rate of \$0.0030 per share, where "default" refers to the standard rates assessed by the Exchange to Members for orders that remove liquidity absent Members qualifying for additional volume tiered pricing.⁴ The Exchange proposes to delete Footnote 12 in its entirety and any references thereto.

Currently, the Exchange's fee schedule displays a discounted removal rate of \$0.0029 per share as the rate for removing liquidity and the rate for Flags N, W, 6, BB, and PI subject to the volume thresholds in Footnotes 1 and 12.⁵ Because the Exchange proposed to delete Footnote 12 in its entirety, the Exchange proposes to amend the rates displayed for removing liquidity on the fee schedule to \$0.0030 per share, which represents the current default rate. Accordingly, the Exchange proposes to amend the displayed rate for removing liquidity on the EDGX fee schedule and the removal rates for Flags N, W, 6, BB, and PI from \$0.0029 per share to \$0.0030 per share, and these rates will continue to remain subject to the volume tier requirements of the Mega Tier in Footnote 1.

Currently, Footnote 11 on the Exchange's fee schedule states that for Flags EA or ER, if a Member internalizes more than 4% of their average daily volume ("ADV") on EDGX (added, removed, and routed liquidity) and the Member, at a minimum, meets the criteria for the Mega Tier rebate of \$0.0032 per share as described in Footnote 1, then the Member receives the applicable rebate in Footnote 1 for adding liquidity, or is charged the applicable removal rate in Footnote 1 or

12. Because the Exchange proposes to eliminate the discounted removal rate for achieving the volume tier requirements in Footnote 12 in its entirety, the Exchange also proposes to eliminate the discounted removal rate for achieving the volume tier requirements in Footnote 12 provided for in Footnote 11. Therefore, the Exchange will charge the default removal rate of \$0.0030 per share regardless of the Member's add liquidity ratio unless that Member qualifies for the discounted removal rate of \$0.0029 per share, as described in the Mega Tier of Footnote 1, should that Member achieve the volume tier requirements.

The Exchange proposes to assess a fee of \$0.0025 per share in lieu of the current fee of \$0.0023 per share for Members' orders that are routed or re-routed to the New York Stock Exchange ("NYSE") and remove liquidity, yielding Flag D. This proposed change represents a pass-through of the rate that Direct Edge ECN LLC d/b/a DE Route ("DE Route"), the Exchange's affiliated routing broker dealer, is charged for routing orders to NYSE, in response to the pricing changes in NYSE's filing with the Securities and Exchange Commission (the "SEC").⁶

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4),⁸ 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 currently offers Members a discounted removal rate of \$0.0029 per share where their add liquidity ratio is equal to or greater than 10%, as described in Footnote 12. The Exchange proposes to eliminate the discounted removal rate for achieving the volume tier requirements of Footnote 12 in its entirety and any references thereto, and the Exchange proposes to charge Members the default removal rate of \$0.0030 per share regardless of their add liquidity ratio. The Exchange believes that its proposal to eliminate the discounted removal rate for achieving the volume tier requirements of Footnote 12 in its

entirety represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because the Exchange will use the additional \$0.0001 per share revenue generated from removing this volume tier to offset the administrative and infrastructure costs associated with operating a national securities exchange. In addition, the Exchange's proposal is reasonable because it will allow the Exchange to assess a fee for removing liquidity from EDGX that is competitive with other market centers.⁹ The Exchange also notes that with the removal of this tier, Members will continue to be subject to the other fees and tiers listed on the Exchange's fee schedule. Lastly, the Exchange believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange currently offers Members a discounted removal rate of \$0.0029 per share, as described in Footnote 11 and subject to the volume tier requirements in Footnotes 1 and 12, where the Member internalizes more than 4% of their ADV on EDGX (added, removed, and routed liquidity) and the Member, at a minimum, meets the criteria for the Mega Tier rebate of \$0.0032 per share in Footnote 1. Because the Exchange proposed to eliminate the discounted removal rate for achieving the volume tier requirements of Footnote 12 in its entirety and any references thereto, the Exchange also proposes to eliminate the discounted removal rate for achieving the volume tier requirements of Footnote 12 provided for in Footnote 11. Accordingly, the Exchange proposes to charge the default removal rate of \$0.0030 per share regardless of a Member's add liquidity ratio unless that Member qualifies for a discounted removal rate of \$0.0029 per share, as described in Footnote 11 and pursuant to the volume tier requirements in the Mega Tier in Footnote 1. The Exchange believes that its proposal to eliminate the discounted removal rate for achieving the volume tier requirements of Footnote 12, as described in Footnote 11, represents an equitable allocation of

⁴ The Exchange notes that Members may qualify for a removal rate of \$0.0029 per share for Flags N, W, 6, BB and PI where they satisfy the volume tier requirements for the Mega Tier in Footnote 1.

⁵ The Exchange notes that the default removal rate remains \$0.0030 per share.

⁶ See NYSE's Trader Update at <http://www.nyse.com/pdfs/NYSE%20Client%20Notice%20Fees%2010%201%202012.pdf> (discussing NYSE's fee changes effective October 1, 2012).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ See NASDAQ OMX Group, Inc., Price List—Trading & Connectivity, <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#remove>. The NASDAQOMX Group Inc.'s default rate for removing liquidity in Tape A, B and C securities for all MPIDs is \$0.0030 per share. See also BATS BZX Exchange, Inc., BATS BZX Exchange Fee Schedule (effective September 10, 2012), http://cdn.bats-trading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf. BATS BZX Exchange, Inc.'s default rate for removing liquidity in Tape A, B and C securities for all MPIDs is \$0.0029 per share.

reasonable dues, fees and other charges among its Members and other persons using its facilities because the Exchange will use the additional \$0.0001 per share revenue generated from removing this volume tier to offset the administrative and infrastructure costs associated with operating a national securities exchange. In addition, the Exchange's proposal is reasonable because it will allow the Exchange to assess a fee for removing liquidity from EDGX that is competitive with other market centers.¹⁰ The Exchange also notes that with the removal of this tier, Members will continue to be subject to the other fees and tiers listed on the Exchange's fee schedule. Lastly, the Exchange believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The rates associated with routing orders to NYSE through DE Route on the Exchange's fee schedule are pass-through rates from DE Route to the Exchange and represent an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NYSE through DE Route. The Exchange notes that routing through DE Route is voluntary. Currently, for orders yielding Flag D, NYSE charges DE Route a fee of \$0.0023 per share, which, in turn, is passed through to the Exchange. The Exchange, in turn, charges its Members a fee of \$0.0023 per share as a pass-through. In NYSE's pricing changes for October 1, 2012, NYSE increased the rate it charges its customers, such as DE Route, from \$0.0023 per share to a charge of \$0.0025 per share for orders that are routed or re-routed to NYSE and remove liquidity. Therefore, the Exchange believes that the proposed change for Flag D from a fee of \$0.0023 per share to a fee of \$0.0025 per share is equitable and reasonable because it accounts for the pricing changes on NYSE. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed or re-routed to NYSE and remove liquidity using DE Route. Lastly, the Exchange also 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)(A) of the Act¹¹ and Rule 19b-4(f)(2)¹² 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-EDGX-2012-45 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-2012-45. 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-EDGX-2012-45 and should be submitted on or before November 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

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¹⁰ *Id.*

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 19b-4(f)(2).

¹³ 17 CFR 200.30-3(a)(12).