SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64632; File No. SR-EDGX-2011-17)

June 8, 2011

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 1, 2011, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet website at http://www.directedge.com.

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

2 17 CFR 240.19b-4.

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

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

Purpose

For customer internalization, which occurs when two orders presented to the Exchange from the same Member (i.e., MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another,[4] the Exchange charges $0.0001 per share per side of an execution (for adding liquidity and for removing liquidity) for Flags E and 5. This charge occurs in lieu of the standard or tiered rebate/removal rates. Therefore, Members incur a total transaction cost of $0.0002 per share for both sides of an execution for customer internalization.

In SR-EDGX-2011-13 (April 29, 2011), the Exchange represented that "it will work promptly to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread." In order to ensure that the internalization fee is no more favorable than the prevailing maker/taker spread of $0.0007 for the standard add (rebate of $0.0023) – standard removal rate ($0.0030 charge per share), the Exchange is

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4 Members are advised to consult Rule 12.2 respecting fictitious trading.

proposing to charge $0.00035 per side for customer internalization (Flags E and 5). However, if a Member posts 10,000,000 shares or more of average daily volume ("ADV") to EDGX, then the Member would get the current rate of $0.0001 per share per side for customer internalization.[5] If this occurs, then the Member's rate for inadvertently matching with itself decreases to $0.0001 per share per side, as the Member has met the least restrictive criteria to satisfy a tier (i.e., Super Tier, Ultra Tier, Mega Tier). The Exchange is proposing to add language clarifying this point to footnote 11 and append the reference to footnote 11 to Flags E and 5.

In each case (both tiered and standard rates), the charge for Members inadvertently matching with themselves is no more favorable than each maker/taker spread. The applicable rate for customer internalization thus allows the Exchange to discourage potential wash sales.

The Exchange also proposes to add footnote 1 to the "MM" flag to clarify that Flag MM executions (adding liquidity to MidPoint Match) count towards the tiered rates listed in footnote 1 (Super Tier, Ultra Tier, Mega Tier).

The Exchange proposes to amend footnote 3 to reflect NYSE's increase in charge from $0.0021 per share to $0.0023 per share for removing liquidity in stocks priced below $1.00.

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5 As noted in SR-EDGX-2011-13 (April 29, 2011), EDGX has a variety of tiered rebates ranging from $0.0030- $0.0034 per share, which makes its maker/taker spreads range from $0 (standard removal rate -Super Tier rebate), -$0.0001, (standard removal rate – Ultra Tier rebate)-$0.0002 (standard removal rate - Mega Tier rebate of $0.0032), and -$.0004 (standard removal rate - Mega Tier rebate of $0.0034 per share). As a result of the customer internalization charge, Members who internalized would be charged $0.0001 per share per side of an execution (total of $0.0002 per share) instead of capturing the maker/taker spreads resulting from achieving the tiered rebates.

Currently, Members can qualify for the Mega Tier and be provided a rebate of $0.0032 per share for liquidity added on EDGX in either of two ways: (i) if the Member on a daily basis, measured monthly, posts 0.75% of the Total Consolidated Volume ("TCV")[6] in average daily volume; or (ii) if the Member, on a daily basis, measured monthly, posts 15,000,000 shares more than their February 2011 average daily volume, provided that their February 2011 average daily volume equals or exceeds 1,000,000 shares added to EDGX. The Exchange proposes to amend the Mega Tier criteria in (ii), above, for achieving a $0.0032 rebate to indicate that Members will qualify for such rebate if, on a daily basis, measured monthly, they post 10,000,000 shares more than their February 2011 average daily volume added to EDGX. In an effort to make it easier for Members to achieve the Mega Tier rebate during lower transaction volume days, the Exchange would like to lower the current daily share posting requirement to 10,000,000 shares from 15,000,000 shares. Additionally, in order to allow more constituents to reach the Mega Tier in general, the Exchange would also like to remove, in its entirety, the baseline requirement that a Member's February 2011 average daily volume equals or exceeds 1,000,000 shares.

Finally, the Exchange proposes to decrease the rebate on Flag C (routed to Nasdaq BX, removes liquidity) from $0.0014 per share to $0.0005 per share.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on June 1, 2011.

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[6] TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities.

Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange 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 believes that the increased fee for customer internalization of $0.00035 per share per side of an execution for both Flags E (regular trading session) and 5 (pre and post market) represents an equitable allocation of reasonable dues, fees, and other charges as it is designed to introduce a fee for Members who inadvertently match with one another, thereby discouraging potential wash sales. The increased fee also allows the Exchange to offset its administrative, clearing, and other operating costs incurred in executing such trades. Finally, the fee is equitable in that it is in line[9] with the EDGX fee structure which currently has a maker/taker spread of $0.0007 per share (the standard rebate to add liquidity on EDGX is $0.0023 per share, while the standard fee to remove liquidity is $0.0030 per share).

With respect to Members that satisfy the criteria for various tiered rebates, EDGX notes that its maker/taker spreads range from $.0007 (standard add – standard removal rate), $0 (standard removal rate -Super Tier rebate), -$0.0001, (standard removal rate - Ultra Tier rebate)-$0.0002 (standard removal rate - Mega Tier rebate of $0.0032), and -

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7 15 U.S.C. 78f.

8 15 U.S.C. 78f(b)(4).

9 In each case, the internalization fee is no more favorable to the Member than each prevailing maker/taker spread.

$.0004 (standard removal rate - Mega Tier rebate of $0.0034 per share). As a result of the proposed charge for Members inadvertently matching with themselves, such Members would be charged $0.00035 per share per side of an execution (total of $0.0007 per share) for those not meeting the criteria for the Super Tier (posting 10,000,000 shares or more of ADV to EDGX). For those meeting the criteria for any tier, Members would charged $0.0002 per share instead of capturing the maker/taker spreads resulting from achieving the tiered rebates, as described above.

This increased fee per side of an execution ($.00035 per side instead of $0.0001 per side per share), yielding a total cost of $0.0007, thus brings the internalization fee in line with the current maker/taker spreads.[10] The Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

The increase in fee from $0.0021 per share to $0.0023 per share, as reflected in footnote 3, is assessed by NYSE for stocks priced below $1.00. This increase in fee is a pass through of NYSE's increased fee, effective January 3, 2011. The same rate change was made for orders in securities priced $1 and over for securities that are routed or re-routed to NYSE (Flag D) in the Exchange's fee filing effective January 1, 2011.[11] EDGX believes that it is reasonable and equitable to pass on these fees to its members.

The Exchange believes that amending the criteria to qualify for the Mega Tier represents an equitable allocation of reasonable dues, fees, and other charges since higher rebates are directly correlated with more stringent criteria.

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10 The Exchange will continue to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread.

11 See SR-EDGA-2010-26 (December 28, 2010).

The Mega Tier rebate of $0.0034/$0.0032 per share has some of the most stringent criteria associated with it, and is $0.0003/$0.0001 greater than the Ultra Tier rebate ($0.0031 per share) and $0.0004/$0.0002 greater than the Super Tier rebate ($0.0030 per share).

For example, based on average TCV for April 2011 (7.0 billion), in order for a Member to qualify for the Mega Tier rebate of $0.0034, the Member would have to add or route at least 4,000,000 shares of average daily volume during pre and post-trading hours and add a minimum of 38,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours. The criteria for this tier is the most stringent as fewer Members generally trade during pre and post-trading hours because of the limited time parameters associated with these trading sessions. The Exchange believes that this higher rebate awarded to Members would incent liquidity during these trading sessions. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of a higher rebate.

Another way a Member can qualify for the Mega Tier (with a rebate of $0.0032 per share) would be to post 0.75% of TCV. Based on average TCV for April 2011 (7.0 billion), this would be 52.5 million shares on EDGX. A second method, as proposed in this filing, to qualify for the rebate of $0.0032 per share would be to post 10,000,000 shares more than the Member's February 2011 average daily volume added to EDGX. The Exchange believes that requiring Members to post 10,000,000 shares more than a

February 2011 baseline average daily volume encourages Members to add increasing amounts of liquidity to EDGX each month. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of a higher rebate. The increased liquidity also benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the one proposed herein have been widely adopted in the cash equities markets, and are equitable because they 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 processes.

In order to qualify for the Ultra Tier, which has less stringent criteria than the Mega Tier, the Member would have to post 0.50% of TCV. Based on average TCV for April 2011 (7.0 billion shares), this would be 35 million shares on EDGX.

Finally, the Super Tier has the least stringent criteria of the tiers mentioned above. In order for a Member to qualify for this rebate, the Member would have to post at least 10 million shares on EDGX. As stated above, these rebates also result, in part, from lower administrative and other costs associated with higher volume. The Exchange believes that the decreased rebate on Flag C when EDGX routes to Nasdaq BX is designed to provide for the equitable allocation of reasonable dues, fees and other charges as it represents a straight pass through of Nasdaq BX's decreased rebate from $0.0014 per share to $0.0005 per share, which is effective June 1, 2011. EDGX believes that it is reasonable and equitable to pass on these fees to its members.

The Exchange 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 changes reflect 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 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. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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. <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

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. <u>Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action</u>

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b-4(f)(2)[13] thereunder. At any time within 60

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[12] 15 U.S.C. 78s(b)(3)(A)(ii).

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EDGX-2011-17 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-2011-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

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13 17 CFR 19b-4(f)(2).

Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room 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-EDGX-2011-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn
Deputy Secretary

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14 17 CFR 200.30-3(a)(12).