

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65189; File No. SR-EDGX-2011-26)

August 24, 2011

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the EDGX Fee Schedule to establish an Annual Membership Fee, Monthly Trading Rights Fee, and a Monthly MPID Fee

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 19, 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, 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 the fee schedule assessed on members, effective September 1, 2011, to establish: (i) an Annual Membership Fee; (ii) a monthly Trading Rights Fee; and (iii) a monthly fee for each member Market Participant Identifier (“MPID”) in excess of five MPIDs. The text of the proposed rule change is available on the Exchange’s website at 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

To help pay for the costs of regulating EDGA members, the Exchange proposes to establish the following membership fees: (i) an Annual Membership Fee for EDGA members; (ii) a Trading Rights Fee for EDGA members; and (iii) a fee for each MPID approved by EDGA for use by a member firm on EDGA's systems in excess of five. The Exchange believes that each fee is warranted in order to provide for a dedicated source of revenue to be applied toward funding the overall regulation of the Exchange and its members. On July 26, 2011, the Exchange provided its Members with notice about these proposed fees, which would be implemented on September 1, 2011, pending SEC approval.

Annual Membership Fee & Trading Rights Fee

First, EDGA proposes to charge an Annual Membership fee of \$2,000 to each member firm of EDGA which will support their exchange membership for the calendar year. The fee will be charged per member firm. For 2011, the Exchange proposes to charge firms on a pro-rated basis beginning September 1, 2011. Beginning in January 2012, the Exchange plans to charge an Annual Membership Fee which will be assessed on all EDGA members as of a date determined by EDGA in January of each year. For any month in which a firm is approved for membership with the Exchange after the January renewal period, the Annual Membership Fee will be pro-rated beginning on the date on which membership is approved. The pro-rated fee will be calculated based on the remaining trading days in that year, and assessed in the month following

membership approval. For example, if a firm applies for membership with the Exchange on or before the close of the January renewal period, and is approved for membership in the same month, the new Member will pay a \$2000 Annual Membership fee. However, if a firm applies and is accepted for membership with the Exchange in February 2012, the new Member will be assessed a pro-rated Annual Membership Fee for the period beginning the first trading day in February in which they are a member through the end of 2012. The fee will be assessed in the next month's billing cycle. In this case, March 2012.

In addition, the fee will not be refundable in the event that the firm ceases to be an EDGA member following the date on which fees are assessed. However, if a Member is pending a voluntary termination of rights as a Member pursuant to Rule 2.8 prior to the date any Annual Membership Fee for a given year will be assessed (i.e, September 1, 2011, January 1, 2012, etc.) and the Member does not utilize the facilities of EDGA³ during such time, then the Member will not be obligated to pay the Annual Membership Fee. For example, if a Member submits a request to terminate their membership prior to close of business on August 31, 2011, the Member will not be charged any Annual Membership Fee regardless of how long it takes for the Member's voluntary termination of membership to become effective. Prior to the September 1, 2011 implementation date for these fee changes only, the Exchange will also waive monthly Trading Rights and MPID fees, as described below, if a Member is pending a voluntary termination of rights pursuant to Rule 2.8 and the Member does not utilize the facilities of EDGA during such time. This waiver of such fees by the Exchange will again occur regardless of how long it takes for the Member's voluntary termination of membership to become effective. The Exchange believes this to be appropriate since ordinarily there is a 30 day waiting period

³ This would include Members adding, removing, or routing liquidity to EDGA.

before such resignation shall take effect provided the conditions provided for in Rule 2.8 are satisfied.⁴

Second, EDGA proposes to charge member firms a monthly Trading Rights Fee of \$300 per month for the ability to trade on the EDGA Exchange. Firms will be charged per month, regardless of the volume of shares traded. For any month in which a firm is approved for membership with the Exchange, the monthly Trading Rights Fee will be pro-rated beginning on the date on which membership is approved. The pro-rated fee will be calculated based on the remaining trading days in that month. In any month in which the firm terminates membership with the Exchange, the monthly Trading Rights Fee will be pro-rated based on the number of trading days which have elapsed in that month. The Exchange plans to implement the Trading Rights Fee and charge firms directly beginning September 1, 2011.

EDGA believes that even with these proposed fees, the cost of EDGA membership is generally lower than the cost of membership in other SROs.⁵

⁴ These conditions include: (i) the Exchange's receipt of such written resignation; (ii) the member's having satisfied all outstanding indebtedness due the Exchange; (iii) any Exchange investigation or disciplinary action brought against the Member having reached a final disposition; and (iv) any examination of such Member in process having been completed, and all exceptions arising out of such examination having been satisfactorily resolved.

⁵ See, e.g., NASDAQ OMX Group, Inc., Equity Rule 7001, at <http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F4&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dequityrules%2F> (assessing an \$3,000 annual membership fee and \$500 per month trading rights fee on members); New York Stock Exchange Price List 2011, at http://www.nyse.com/pdfs/nyse_equities_pricelist.pdf (assessing a \$40,000 annual trading license fee for the first two licenses held by a member organization, among other itemized regulatory and trading rights fees); Chicago Stock Exchange Fees and Assessments, at http://www.chx.com/content/Participant_Information/Downloadable_Docs/Rules/CHX_Fee_Schedule_04252011.pdf (assessing a \$7,200 annual trading permit fee).

Market Participant Identifier (“MPID”) Fee

An MPID is a four character identifier that is approved by the Exchange and assigned to the member firm for use on the EDGX exchange to identify the firm on the orders sent to the Exchange and resulting executions. Many member firms request the use of one MPID as the identifier for their exchange transactions. However, a member firm may request additional MPIDs for use by separate business units and trading desks or to support sponsored access participants. EDGX notes that certain member firms possess many underutilized MPIDs through which very little or no activity occurs. These unused or underutilized MPIDs provide negligible benefit to the market, yet represent an administrative and regulatory burden to EDGX. In order to address the burden of administering and supporting multiple MPIDs for member firms, EDGX proposes to assess a monthly fee of \$250 per month beginning September 1, 2011 for each MPID approved by the Exchange for use by a member firm on EDGX’s systems in excess of five MPIDs. The MPID Fee will be assessed on a pro-rated basis by charging the firm based on the trading day in the month during which an MPID greater than five becomes effective for use. If the MPID is terminated within a month, the MPID Fee will be charged in full regardless of the number of trading days elapsed or remaining in that month. The Exchange believes that this practice is appropriate because of the administrative costs associated with disabling MPIDs. The Exchange also believes that assessing a fee on supplemental MPIDs will benefit the markets and investors because such fee will promote efficiency in MPID use.

The Exchange notes that NASDAQ currently assesses a Supplemental MPID Fee of \$1,000 per month, per MPID, for any MPID in excess of one. Similarly, the New York Stock Exchange (“NYSE”) charges fees for access to its floor which are analogous to the proposed MPID fee. The NYSE fees are based on the number of individuals that a member firm wishes to

employ on the floor of the exchange and include, among other things, an annual fee of \$40,000 per trading license per floor broker, a \$5,000 annual fee per handheld device used on the floor, and a \$250 annual badge maintenance fee per badge. Under the proposed MPID Fee schedule, EDGA member firms would not be charged for maintaining five or less MPIDs, but would pay the proposed \$250 monthly MPID fee only if the member maintains more than five MPIDS. In addition, members would be charged a proposed \$2,000 annual membership fee and trading rights fee of \$300 per month, totaling \$5,600 annually.⁶ Thus, EDGA believes that even with the proposed MPID fee, the cost of EDGA membership is generally lower than the cost of membership in other SROs.

Basis

EDGX believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,⁷ in general, and Section 6(b)(4) of the Act,⁸ 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 that EDGX operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

First, the Exchange believes that assessing an Annual Membership Fee and a Trading Rights Fee provides an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange makes all services and products subject to these fees available on a non-discriminatory basis to similarly situated recipients.

EDGX believes the Annual Membership Fee and monthly Trading Rights Fee are a reasonable

⁶ See supra note 5 (explaining the fee structure of the NASDAQ OMX Group, Inc., the New York Stock Exchange, and the Chicago Stock Exchange).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

and equitable method of ensuring that its fees fund a greater portion of the cost of regulating the EDGX market, and that even after assessing these fees, the overall cost of EDGX membership is reasonable as compared with the costs of membership in other SROs.

Second, with respect to MPID fees, member firms will continue to have discretion to request EDGX approval to use additional MPIDs on EDGX. Use of more than five MPIDs is voluntary and solely determined by the member firm's needs. The Exchange believes that charging for more than five MPIDs is reasonable given that other exchanges charge members for having more than one MPID.⁹ The proposed Market Participant Identifier Fee will be imposed on all member firms equally based on the number of MPIDs approved for use on EDGX. EDGX also believes that the proposed fee will encourage efficiency in member firm's use of MPIDs.

Further, the market for transaction execution and routing services is highly competitive. Broker-dealers currently have numerous alternative venues for their order flow, including multiple competing self-regulatory organizations markets, as well as broker-dealers and aggregators such as electronic communications networks. A member firm is able to select any venue of which it is a member or participant to send its order flow. As such, if member firms believe that the proposed (i) annual membership fee, (ii) trading rights fee, or (iii) fee for MPIDs in excess of five, is excessive they may easily choose to move their order flow elsewhere. EDGX believes that its proposed fees are comparable to, and lower than, analogous NASDAQ and NYSE fees.

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

The proposed rule change does not impose any burden on competition that is not

⁹ See, e.g., NASDAQ OMX Group, Inc., Equity Rule 7001, at <http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F4&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dequityrules%2F> (assessing a Supplemental MPID Fee of \$1,000 per month, per MPID, for any MPID in excess of one).

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 Act¹⁰ and Rule 19b-4(f)(2)¹¹ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-EDGX-2011-26 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 19b-4(f)(2).

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-2011-26. 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 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-EDGX-2011-26 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Elizabeth M. Murphy
Secretary

¹² 17 CFR 200.30-3(a)(12).