

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69482; File No. SR-EDGX-2013-14)

April 30, 2013

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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 23, 2013, 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 Members<sup>3</sup> and non-Members of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members and non-Members. The text of the proposed rule change is available on the Exchange's Internet website at [www.directedge.com](http://www.directedge.com), at the Exchange's principal office, and at the Public Reference Room of the Commission.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> As defined in Exchange Rule 1.5(n).

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

In SR-EDGX-2010-06,<sup>4</sup> the Exchange adopted an annual fee per physical port utilized by Members and non-Members to connect to the Exchange's System<sup>5</sup> for order entry and the receipt of Exchange data, among other reasons. A physical port is a port used by a Member or non-Member to connect into the Exchange at the data centers where Exchange servers are located. Physical port connections can occur either through an external telecommunication circuit or a cross-connection. The Exchange noted at the time of filing that other market centers provided similar services.<sup>6</sup> In SR-EDGX-2013-03,<sup>7</sup> the Exchange amended its fee schedule, effective February 1, 2013, to eliminate the option for Members and non-Members to pay for physical ports on an annual basis.

The Exchange currently assesses the following physical port fees for Members and non-Members on a monthly basis: \$500 per physical port that connects to the System via a 1 gigabyte Copper circuit; \$750 per physical port that connects to the System via a 1 gigabyte

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<sup>4</sup> See Securities Exchange Act Release No. 62437 (July 1, 2010), 75 FR 39599 (July 9, 2010) (SR-EDGX-2010-06).

<sup>5</sup> As defined in Exchange Rule 1.5(cc).

<sup>6</sup> See Securities Exchange Act Release No. 62437 (July 1, 2010), 75 FR 39599 (July 9, 2010) (SR-EDGX-2010-06) (citing Securities Exchange Act Release No. 61545 (February 19, 2010), 75 FR 8769 (February 25, 2010) (SR-BATS-2009-032) and Securities Exchange Act Release No. 62392 (June 28, 2010), 75 FR 38857 (July 6, 2010) (SR-NASDAQ-2010-077)).

<sup>7</sup> See Securities Exchange Act Release No. 68831 (February 5, 2013), 78 FR 9763 (February 11, 2013) (SR-EDGX-2013-03).

Fiber circuit; and \$1,000 per physical port that connects to the System via a 10 gigabyte Fiber circuit.

The Exchange proposes to amend its fee schedule to account for increased infrastructure costs associated with providing physical ports. As such, the Exchange proposes to amend its fee schedule, effective May 1, 2013, to assess the following physical port fees for Members and non-Members: (i) increase the monthly fee per physical port that connects to the System via a 1 gigabyte Fiber circuit from \$750 to \$1,000; (ii) increase the monthly fee per 10 gigabyte Fiber circuit from \$1,000 to \$2,000. The Exchange notes that the fee charged per 1 gigabyte Copper circuit will remain unchanged.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</sup> in particular, as it provides 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 proposal represents an equitable allocation of reasonable dues, fees, and other charges as its billing for port fees is reasonably constrained by competitive alternatives.<sup>10</sup> If a particular exchange charges excessive fees for connectivity, affected Members and non-Members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or

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<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> See Securities Exchange Act Release No. 69226 (March 25, 2013), 78 FR 19350 (March 29, 2013) (SR-BATS-2013-018). See, e.g., Nasdaq Rule 7034(b); BATS BZX & BYX Exchange Fee Schedules, [http://cdn.batstrading.com/resources/regulation/rule\\_book/BATS-Exchanges\\_Fee\\_Schedules.pdf](http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf).

market center or taking that exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

Furthermore, the proposed rule change is also an equitable allocation of reasonable dues, fees, and other charges as the Exchange believes that the increased fees obtained will enable it to cover its increased infrastructure costs associated with establishing physical ports to connect to the Exchange's systems at the Exchange's primary and secondary data centers. The additional revenue from the increased fees will also enable the Exchange to continue to maintain and improve its market technology and services. The Exchange believes that the proposed fees for 1 gigabyte Fiber circuit of \$1,000 per month and for 10 gigabyte Fiber circuit of \$2,000 per month are reasonable in that they are in the same range as analogous fees charged by other exchanges, which are \$1000 per month for 1 gigabyte connectivity and range from \$2,500 - \$5,000 per month for 10 gigabyte circuits.<sup>11</sup>

Finally, the Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members and non-Members. Members and non-Members will continue to choose whether they want more than one physical port and choose the method of connectivity based on their specific needs.

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<sup>11</sup> See, e.g., Nasdaq Rule 7034(b); BATS BZX & BYX Exchange Fee Schedules, [http://cdn.batstrading.com/resources/regulation/rule\\_book/BATS-Exchanges\\_Fee\\_Schedules.pdf](http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf).

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 not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including port fee access, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The proposal to increase the fees for physical connectivity would bring the fees charged by the Exchange closer to similar fees charged for physical connectivity by other exchanges.<sup>12</sup>

In addition, the proposed rule change does not impose any burden on intramarket competition as the fees are uniform for all Members and non-Members. The Exchange notes that Members and non-Members also have the ability to obtain access to these services without the need for an independent physical port connection, such as through alternative means of financial extranets and service bureaus that act as a conduit for orders entered by Members and non-Members.

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.

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<sup>12</sup> Id.

### 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 Act<sup>13</sup> and Rule 19b-4(f)(2)<sup>14</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2013-14 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-2013-14. 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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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-2013-14 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.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).