

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62640; File No. SR-EDGX-2010-10)

August 4, 2010

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 July 30, 2010, 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<sup>3</sup> of the Exchange pursuant to EDGX Rule 15.1(a) and (c) to (i) establish a rebate; (ii) charge for legacy International Securities Exchange (“ISE”) FIX session fees; and (iii) make other technical amendments to the fee schedule.

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

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

<sup>3</sup> A Member is any 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

1. Purpose

(i) ISE FIX Session Fees

The Exchange proposes to charge for legacy ISE<sup>4</sup> Financial Information Exchange (“FIX”) sessions (“Sessions”) used to connect to EDGX and thereby, amend its fee schedule accordingly.<sup>5</sup> These are logical ports used to enter orders into the Exchange’s trading system and to receive order messages from the Exchange. The Sessions are currently being used to send orders to EDGX by certain legacy Members of the ISE who became Members of EDGX. The amendment to the fee schedule enables the Exchange to continue to bill Members for these Sessions until they are terminated. Members will be charged \$250/month for the first two

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<sup>4</sup> A wholly-owned subsidiary of Direct Edge Holdings, LLC (prior to July 16, 2010) previously operated the ISE Stock Exchange as a facility of ISE. These Session fees are identical to the fees filed previously filed by and billed for by the ISE. See Securities Exchange Act Release No. 56379 (September 10, 2007), 72 FR 52591 (September 14, 2007) (SR-ISE-2007-79).

<sup>5</sup> As stated in SR-ISE-2007-79, the ISE used the Financial Information Exchange (FIX ) protocol, which Members program to in order to develop applications that send trading commands and/or queries to and receive broadcasts and/or transactions from the trading system. The protocol processes quotes, receives orders from Members, tracks activity in the underlying markets, when applicable, executes trades in the matching engine, and broadcasts trade details to participating Members.

Sessions and \$50/month for each Session thereafter. The Exchange believes that the fees obtained will enable it to cover certain costs. First, the fees would enable the Exchange to charge for existing infrastructure costs for a legacy system that the Exchange is planning to discontinue using. Secondly, the fees would cover those costs associated with allowing Members to continue to use this legacy infrastructure until they have successfully transitioned to EDGX Sessions (which are currently provided at no charge). Finally, switching over to the EDGX Sessions involves no additional costs nor software changes by Members.

(ii) Other Technical Amendments

The Exchange proposes to make several technical amendments to its fee schedule. The Exchange proposes to move the text in footnote 1 that states that “upon a Member’s request, EDGX will aggregate share volume calculations for wholly owned affiliates on a prospective basis” to new footnote “a.” Then, the Exchange proposes adding a reference to footnote “a” next to all numbered footnotes (except footnotes 2 and 4 since these say “intentionally omitted.”) This amendment clarifies that the ability of Members to request aggregation and the Exchange to aggregate share volume calculations for wholly owned affiliates on a prospective basis applies across all fee and volume threshold calculations and not just to the language found in footnote 1.

The Exchange proposes to delete the reference to footnote 4 found on Flags E and 5 since footnote 4 is “intentionally omitted” and leaving the reference intact leads to confusion by Members.

(iii) Proposed Rebate

Currently, Members can qualify for a rebate of \$0.0032 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 shares of average daily volume prior to 9:30 AM or after 4:00 PM (includes all flags except 6) AND add a minimum of 50,000,000 shares of

average daily volume on EDGX in total, including during both market hours and pre and post-trading hours.

The Exchange proposes to add an additional rebate to footnote 1 of its fee schedule which will provide Members a \$0.0031 rebate per share for liquidity added on EDGX if the Member on a daily basis, measured monthly posts 0.75% of the Total Consolidated Volume (“TCV”) in average daily volume. 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. The Exchange believes that this pricing is appropriate since this rebate (\$ 0.0031 per share), which is \$0.0001 lower than the \$0.0032 per share rebate mentioned above, is also easier to meet. For example, 0.75% of the average TCV for June 2010 (9.3 billion) was approximately 70 million shares, but this volume need not be posted (like that required for the \$0.0032 rebate per share) only during pre and post-trading hours, a more limited time period. Therefore, this threshold is not as restrictive as the criteria to qualify for the \$0.0032 rebate. In addition, the rebate also results in part from lower administrative costs associated with higher volume.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on August 1, 2010.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>7</sup> 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 notes that it operates in a highly competitive market in which market participants can readily direct order flow to

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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 fees obtained from legacy ISE Sessions will enable it to cover its infrastructure costs associated with allowing Members to continue to use this legacy infrastructure until they have successfully transitioned to EDGX Sessions. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and provide higher rebates for higher volume thresholds, resulting from lower administrative costs. 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 those members that opt to direct orders to the Exchange rather than competing venues.

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<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder. At any time within 60 days of the filing of such proposed rule

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 19b-4(f)(2).

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-2010-10 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-2010-10. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>10</sup> 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

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<sup>10</sup> The text of the proposed rule change is available on Exchange's Web site at <http://www.directedge.com>, on the Commission's Web site at <http://www.sec.gov>, at EDGX, and at the Commission's Public Reference Room.

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-EDGX-2010-10 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.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).