

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62680; File No. SR-EDGX-2010-06)

August 10, 2010

Self-Regulatory Organizations; EDGX Exchange, Inc.; Order Approving Proposed Rule Change to Amend the EDGX Fee Schedule to Impose Fees for Physical Ports Used to Connect to EDGX Exchange

I. Introduction

On July 1, 2010, the EDGX Exchange, Inc. (“EDGX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its fee schedule to begin charging an annual fee to Members and non-members for certain physical ports used to connect to the Exchange’s systems. The proposed rule change was published for comment in the Federal Register on July 9, 2010.³ The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to begin charging an annual fee to Members and non-members for physical ports used to connect to the Exchange’s systems for purposes that include order entry and the receipt of Exchange data. 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.⁴ Physical port connections can occur either through an external telecommunication circuit or a cross-connection. Currently, Members and non-members have a number of alternative methods available to them for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62437 (July 1, 2010), 75 FR 39599.

⁴ Non-members may include non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, as well as sponsored participants and market data recipients.

connecting to the Exchange without the need to obtain an independent physical connection, including the use of financial extranets or service bureaus. The Exchange believes that some Members and non-members may wish to connect directly to the Exchange's systems with their own dedicated circuit connection. To support their requirements and the associated infrastructure costs related to direct circuit connectivity, EDGX proposes to charge Members and non-members the following annual fees based on the connectivity service type:

Connection Service Type	Annual Fee per Physical port
1 Gb Copper	\$5,000
1 Gb Fiber	\$7,500
10 Gb Fiber	\$10,000

Only one physical port is required to access all services for EDGX. However, Members and non-members may choose more than one physical port and different connection service types based on their needs. The Exchange notes that other market centers provide similar services to their Members and non-members.⁵

The Exchange believes that the proposal will offer market participants additional EDGX connectivity choices, providing for greater access to EDGX while allowing each market participant to choose the method of connectivity based on its specific needs.

⁵ See Securities Exchange Act Release No. 61545 (February 19, 2010), 75 FR 8769 (February 25, 2010) (order approving File No. SR-BATS-2009-032). See also Securities Exchange Act Release No. 62392 (June 28, 2010), 75 FR 38857 (July 6, 2010) (notice of filing of File No. SR-Nasdaq-2010-077).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁷ which requires the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities, and Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,⁹ which requires that the rules of an exchange not impose a burden on competition not necessary or appropriate in furtherance of the purpose of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,¹⁰ which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and not unreasonably discriminatory.

The Commission believes that the proposed physical port fees are equitably allocated among Members and non-members and do not unfairly or unreasonably discriminate between

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(8).

¹⁰ 17 CFR 242.603(a).

customers, issuers, brokers, or dealers because the proposed physical port fees do not distinguish among the type of participant but rather are the same for all Members and non-members. The Commission also believes that EDGX was subject to significant competitive pressure to act equitably, fairly, and reasonably in setting the physical port fees, in light of the highly competitive nature of the market for execution and routing services.¹¹

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-EDGX-2010-06) be, and hereby is, approved.

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

Florence E. Harmon
Deputy Secretary

¹¹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (File No. SR-NYSEArca-2006-21).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).