

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64036; File No. SR-EDGX-2011-05)

March 4, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 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, 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> 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>.

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> 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.

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

Reduction in rebate on EDGX for adding liquidity

Currently, on EDGX, there is a rebate of \$0.0026 per share provided for adding liquidity in securities at or above \$1.00. The Exchange proposes to reduce this rebate to \$0.0023 per share. Conforming changes are proposed on Flags B, V, Y, 3, and 4 to reflect this reduced rebate.

Changes to the Mega Tier

Currently, Members can qualify for the Mega Tier<sup>4</sup> and be provided a \$0.0032 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.

First, the Exchange proposes to add clarifying language to the definition of TCV (in footnote 1) to explain that when TCV is calculated for Members, it is based on the month prior to the month in which the fees are calculated. So, when the calculation of TCV is done for March

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<sup>4</sup> The Exchange notes that a Member can qualify for a Mega Tier rebate of \$0.0033 per share if the Member adds or routes 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 adds a minimum of 25,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours.

2011 billing for February 2011 trading activity, the appropriate TCV is based on February 2011 figures.

The Exchange also proposes to provide an additional way for a Member to receive a \$0.0032 rebate per share for liquidity added on EDGX. If a 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, then the Member will receive a \$0.0032 rebate per share.

#### Proposed Changes associated with Routing to BATS BYX Exchange

Currently, the BY flag is yielded when an order is routed to BATS BYX Exchange and removes liquidity using order types ROUC and ROBY, as defined in Exchange Rules 11.9(b)(3)(a) and (g). The Exchange proposes to add footnote 10 to the fee schedule to describe that stocks priced below \$1.00 will be charged \$0.0010 per share. In addition, the Exchange proposes to increase the rebate from \$0.0003 to \$0.0004 when an order is routed to BATS BYX Exchange and removes liquidity using order types ROUC and ROBY.

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

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>6</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.

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<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

The Exchange believes that the reduced rebate of \$0.0023 per share for adding liquidity on EDGX is an equitable allocation of reasonable dues, fees, and other charges as the additional revenue that results from the lower rebate enables the Exchange to cover increased infrastructure and administrative expenses. In addition, the rebate is competitive with rebates offered by Nasdaq and NYSE Arca (\$0.0020 and \$0.0021 per share, respectively).

The Exchange believes that the fee associated with the BY flag (\$0.0010 per share) for stocks priced below \$1 represents an equitable allocation of reasonable dues, fees, and other charges since it reflects a pass through of the BATS fee for removing liquidity. EDGX believes that it is reasonable and equitable to pass on these fees to its members.

The proposed increased rebate when an order is routed to BATS BYX Exchange and removes liquidity (from \$0.0003 to \$0.0004 per share) is designed to incentivize Members to use this routing strategy to increase volume on EDGX. 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 an increased rebate. The increased liquidity also benefits all investors by deepening EDGX's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

This proposed rate represents a discount over the pass through rate of \$0.0003 per share currently provided. The Exchange also believes that this fee structure is an equitable allocation of reasonable dues, fees, and other charges in that it applies uniformly to all Members and the

increased rebate for removing liquidity from BATS is consistent with the processing of similar routing strategies by EDGX's competitors.<sup>7</sup>

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

The Mega Tier rebates of \$0.0033/\$0.0032 per share have the most stringent criteria associated with them, and are \$0.0002/\$0.0001 greater than the Ultra Tier rebate (\$0.0031 per share) and \$0.0003/\$0.0002 greater than the Super Tier rebate (\$0.0030 per share).

For example, based on average TCV for January 2011 (8.0 billion), in order for a Member to qualify for the Mega Tier rebate of \$0.0033, the Member would have to add or route at least 5,000,000 shares of average daily volume during pre and post-trading hours and add a minimum of 25,000,000 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.

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<sup>7</sup> See BATS fee schedule: Discounted Destination Specific Routing ("One Under") to NYSE, NYSE ARCA and NASDAQ. See Securities Exchange Act Release No. 62858, 75 FR 55838 (September 14, 2010) (SR-BATS-2010-023) (modifying the BATS fee schedule in order to amend the fees for its BATS + NYSE Arca destination specific routing option to continue to offer a "one under" pricing model).

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 January 2011 (8.0 billion), this would be 60 million shares on EDGX. A second method, proposed in this filing, to qualify for the rebate of \$0.0032 per share would be to post 15,000,000 shares more than the Member's February 2011 average daily volume, provided that the Member's February 2011 average daily volume equals or exceeds 1,000,000 shares added to EDGX. The Exchange believes that requiring Members to post 15,000,000 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 January 2011 (8.0 billion shares), this would be 40 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 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 change reflects 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 equitable 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. 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-2011-05 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-2011-05. 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,<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 website at <http://www.directedge.com>, on the Commission's website 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 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-2011-05 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>

Cathy H. Ahn  
Deputy Secretary

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