

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68831; File No. SR-EDGX-2013-03)

February 5, 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"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 30, 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 Members³ 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, 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.

³ 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-2010-06,⁴ the Exchange proposed to adopt an annual fee per physical port utilized by Members and non-Members to connect to the Exchange's System⁵ 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.⁶

In SR-EDGX-2010-21,⁷ the Exchange amended its fee schedule, effective January 1, 2011, to allow Members and non-Members the option of paying monthly fees for physical ports used to enter orders in the Exchange's System.

The Exchange proposes to amend its fee schedule to eliminate the option for Members and non-Members to pay for physical ports on an annual basis. The Exchange's current monthly

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

⁵ As defined in Exchange Rule 1.5(cc).

⁶ See Securities Exchange Act Release No. 62437 (July 1, 2010), 75 FR 39599, 39600 (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)).

⁷ See Securities Exchange Act Release No. 63520 (December 10, 2010), 75 FR 78794 (December 16, 2010) (SR-EDGX-2010-21).

rates that it charges Members and non-Members for physical ports remains unchanged; therefore, the Exchange will assess a monthly fee of \$500 per physical port that connects to the Exchange's System via 1 gigabyte Copper circuits; \$750 per physical port that connects to the Exchange's System via 1 gigabyte Fiber circuits; and \$1,000 per physical port that connects to the Exchange's System via 10 gigabyte Fiber circuits. In addition, the Exchange proposes to prorate for the month of January 2013 only the annual fee paid by Members or non-Members who currently have annual billing as of January 1, 2013 and then convert those Members or non-Members to monthly billing starting in February 2013, subject to the execution of a new contract that the Exchange has distributed to all Members and non-Members to reflect this change.⁸ Furthermore, Direct Edge represents that its Members and non-Members who currently have annual contracts for physical ports have either consented to be converted to a month-to-month contract at the proposed rates, or elected to terminate their contract because they no longer require the service.

The Exchange proposes to implement these amendments to its fee schedule on February 1, 2013. Members and Non-Members were notified of the planned changes on November 8, 2012 and through subsequent direct communication.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ in particular, as

⁸ For example, Members or non-Members who are currently billed annually will pay \$416 per physical port for 1GB copper circuits (\$5,000 annual fee/ 12 months) for the month of January 2013 only and then shift to a monthly billing arrangement and pay \$500 per physical port from February 2013 – December 2013 (monthly billing).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

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. For example, the change to monthly billing is reasonable because it is consistent with the monthly options offered by other exchanges, such as the BATS Exchange, Inc. (“BATS”) and NASDAQ Stock Market LLC (“NASDAQ”).¹¹ Furthermore, Members and other persons using the Exchange facilities 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. Members and non-Members also have the ability to choose lower cost connection service types and still obtain access to all EDGX services.

Furthermore, the fees associated with physical ports will continue to be equitably allocated and non-discriminatory as they will continue to be uniform in application 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.

The proposed rule change is also an equitable allocation of reasonable dues, fees, and other charges because, for Members and non-Members, the payment of physical connectivity fees on a monthly basis provides administrative benefits over payments made on an annual basis.

¹¹ The Exchange notes that BATS and NASDAQ only allow for payment of physical port fees on a monthly basis. See BATS Exchange, Inc., BATS BZX and BYX Exchange Fee Schedules, http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf; NASDAQ Stock Market LLC, Price List – Trading & Connectivity, <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2>.

For example, payment on a monthly basis allows Members and non-Members to opt-in or opt-out of physical connectivity on thirty (30) days' notice. Members and non-Members that choose to cancel their physical connectivity within the thirty (30) days' notice will have no recurring obligation.

Finally, 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 through the monthly port fees over the course of a year over annual port fees (an increase of \$1,000 per year per port on all 1Gb copper circuits, \$1,500 per year per port on all 1Gb Fiber circuits, and \$2,000 per year per port on all 10 Gb Fiber circuits) will enable it to cover its increased infrastructure costs associated with allowing Members and non-Members to establish physical ports to connect to the Exchange's systems and continue to maintain and improve its infrastructure, market technology, and services. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members and non-Members. The Exchange believes the fees and monthly billing option remain competitive with those charged by other exchanges and therefore continue to be reasonable and equitably allocated to Members and non-Members.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Proposing to eliminate payment for physical connectivity on an annual basis does not introduce a burden on competition as exchanges such as BATS and NASDAQ currently only allow payment for physical connectivity on a monthly basis.¹² In addition, the proposed rule change does not impose any

¹² Id.

burden on intramarket competition as payment on a monthly basis is available to all Members and non-Members. In addition, 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.

Fees for market access will be a component of the overall fees charged by the Exchange to execute and route orders through the Exchange. As the Commission has recognized, the market for execution and routing services is extremely competitive.¹³ Market participants that choose not to connect directly to the Exchange can readily access liquidity available on the Exchange by directing their order flow to other venues that, under Regulation NMS, must route to the Exchange if it has posted the best price. Accordingly, the Exchange must set its fees and billing options, including access service fees, at a level and in such a way that will not deter market participants from connecting to the Exchange; otherwise, potential users of the Exchange's services will simply direct order flow to the Exchange's multiple competitors.

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.

¹³ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

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 Act¹⁴ and Rule 19b-4(f)(2)¹⁵ 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-2013-03 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-2013-03. 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

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 19b-4(f)(2)[sic].

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-2013-03 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.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).