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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66129; File No. SR-EDGX-2011-39)

January 11, 2012

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 December 30, 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

EDGX Exchange, Inc. ("EDGX" or the "Exchange"), proposes to amend its fees and rebates applicable to Members³ of the Exchange pursuant to EDGX Rule 15.1(a) and (c). Text of the proposed rule change is attached as Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

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

Purpose

The Exchange proposes to amend its fee schedule to add footnote b to it to specify that trading activity on days when the market closes early⁴ does not count toward any volume tiers, which are currently found in footnotes 1, 6, and 11.

The Exchange proposes to amend the Super Tier to lower the rebate from \$0.0030 per share to \$0.0028 per share.

The Exchange proposes to amend the following tier to lower the rebate to \$0.0028 per share as well: Members that post 0.065% of the TCV in average daily volume more than their February 2011 average daily volume added to EDGX will qualify for a \$0.0029 per share rebate (unless they otherwise qualify for a higher rebate) (the “0.065% TCV Tier”).

The Exchange proposes to add another method to qualify for the Mega Tier rebate of \$0.0032 per share if Members add or route at least 4,000,000 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 .20% of the Total Consolidated Volume (TCV) on a daily basis measured monthly, including during both market hours and/or pre and post-trading hours.

The Exchange proposes to implement these amendments to its fee schedule on January 1, 2012.

⁴ In 2012, these days include July 3, 2012, November 23, 2012, and December 24, 2012.

Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act,⁵ in general, and furthers the objectives of Section 6(b)(4),⁶ 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 proposes to amend its schedule to add footnote b to specify that trading activity on days when the market closes early does not count toward volume tiers (footnotes 1, 6, and 11). Since the Exchange is only open until 1PM Eastern Time (“ET”) on these days (e.g., the day after Thanksgiving),⁷ the Exchange believes that counting volume on these days towards the tiers would not be illustrative of typical market activity or liquidity provision, since the trading day is shortened. Therefore, the Exchange proposes to exclude such shortened trading days from any volume tier calculations, as presently found in footnotes numbers 1, 6, and 11. The Exchange believes that the proposed amendment is non-discriminatory in that it applies uniformly to all Members and would more accurately represent their trading volume. In addition, the proposed amendment is in accordance with the practices employed by other Exchanges.⁸

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

⁷ In 2012, these days include July 3, 2012, November 23, 2012, and December 24, 2012.

⁸ See fee schedules of Nasdaq and NYSE Arca found at: <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>; and https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_12_1_2011.pdf

The reduction in rebate of the Super Tier from \$0.0030 per share to \$0.0028 per share 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, when the Exchange lowered its removal rate from \$0.0030 per share to \$0.0029 per share (October 2012), a more significant percentage of EDGX members achieved inverted rates, where the rebate paid to Members for adding liquidity was more than the removal rate of \$0.0029 per share. Given this result, and since the Super Tier has less stringent criteria than either the Mega Tier or Ultra Tier, the Exchange is proposing to moderate the rate and decrease the rebate so that the maker/taker spread is no longer inverted for such a large percentage of Members.

The Exchange believes that the reduced rebate for the Super Tier and the alternative criteria to qualify for the Mega Tier rebate of \$0.0032 per share 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 \$0.0034/\$0.0032 per share have the most stringent criteria associated with them, and are \$0.0003/\$0.0001 greater than the Ultra Tier rebate (\$0.0031 per share) and \$0.0006/\$0.0004 greater than the proposed Super Tier rebate (\$0.0028 per share).

For example, in order for a Member to qualify for the Mega Tier rebate of \$0.0034, the Member would have to add or route at least 4,000,000 shares of average daily volume during pre and post-trading hours and add a minimum of 20,000,000 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.

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 November 2011 (8.0 billion), this would be 60 million shares on EDGX. A second method to qualify for the rebate of \$0.0032 per share would be to post 0.12% of the TCV (9.6 million shares) more than the Member's February 2011 average daily volume added to EDGX. Assuming the Member's February 2011 ADV is 1million shares, the Exchange believes that requiring Members to post 10.6 million more shares 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 proposed Mega Tier rebate of \$0.0032 per share, a Member would have to add or route at least 4,000,000 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 .20% of the Total Consolidated Volume (“TCV”) on a daily basis measured monthly, including during both market hours and/or pre and post-trading hours. Based on an average TCV for November 2011 (8.0 billion shares), a Member would qualify by adding 16 million shares during both market hours and/or pre and post-trading hours and adding or routing at least 4,000,000 shares of average daily volume during pre and post-trading hours. The Exchange notes that fewer Members generally trade during pre and post-trading hours because of the limited time parameters associated with these trading sessions. Therefore, the amount of shares that the Exchange requires to be added or routed to satisfy this tier is less than for the Ultra Tier⁹, for example, which is based on posting liquidity to EDGX during regular trading hours. 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. The Exchange believes that the proposed amendment is non-discriminatory in that it applies uniformly to all Members.

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 November 2011 (8.0 billion shares), this would be 40 million shares on EDGX.

⁹ See discussion in next paragraph regarding Ultra Tier.

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 and would qualify for the amended rebate of \$0.0028 per share. As stated above, these rebates also result, in part, from lower administrative and other costs associated with higher volume. The reduction in rebate would allow the Exchange to recoup additional revenue to recover increased infrastructure and administrative expenses. This rebate also results, in part, from lower administrative and other costs associated with higher volume. The Exchange believes that the proposed amendment is non-discriminatory in that it applies uniformly to all Members.

The reduction in rebate of the 0.065% TCV Tier from \$0.0030 per share to \$0.0028 per share 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. This tier allows Members even greater flexibility with respect to achieving an additional rebate and rewards growth patterns in volume by Members as this rebate's conditions encourage Members to add increasing amounts of liquidity to EDGX each month. Based on an average daily volume in February 2011 (baseline) of 1,000,000 shares, the Member would have to add 6.2 million shares total to qualify for such rebate. This rebate also results, in part, from lower administrative and other costs associated with higher volume. The Exchange believes that the proposed amendment is non-discriminatory in that it applies uniformly to all Members.

The Exchange also 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 and non-discriminatory 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 Act¹⁰ and Rule 19b-4(f)(2)¹¹ 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 19b-4(f)(2).

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-2011-39 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-2011-39. 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 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-2011-39 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.¹²

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2012-769 Filed 01/17/2012 at 8:45 am; Publication Date: 01/18/2012]

¹² 17 CFR 200.30-3(a)(12).