

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64036; File No. SR-EDGX-2011-05]

### 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

March 4, 2011.

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 Web site at <http://www.directed.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 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 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.

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

<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.

<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 a.m. or after 4 p.m. (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.

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

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

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.

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 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,

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

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

<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).

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 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 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 a.m. and 3 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 March 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-5442 Filed 3-9-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64041; File No. SR-FINRA-2011-004]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to the Trading Activity Fee Rate for Transactions in Asset-Backed Securities

March 4, 2011.

#### I. Introduction

On January 10, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to provide a new method of calculating the Trading Activity Fee ("TAF") for transactions in Asset-Backed Securities. The proposed rule change was published for comment in the **Federal Register** on January 27, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

FINRA proposes to amend Section 1 of Schedule A to the FINRA By-Laws to provide a new method of calculating the TAF<sup>4</sup> for transactions in Asset-Backed Securities.<sup>5</sup> The TAF is one of the member regulatory fees FINRA uses to fund its member regulation activities, which include examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.<sup>6</sup> Generally, the TAF is assessed on the sale of all exchange-registered securities wherever executed (except debt securities that are not Trade Reporting and Compliance Engine ("TRACE")-Eligible Securities), over-the-counter equity securities, security futures, TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to MSRB reporting requirements. The rules governing the

TAF also include a list of transactions exempt from the TAF.<sup>7</sup>

In 2010, the Commission approved a proposed rule change that generally makes transactions in Asset-Backed Securities reportable to TRACE.<sup>8</sup> Because Asset-Backed Securities will be TRACE-Eligible Securities, transactions in Asset-Backed Securities will generally be subject to the TAF.

Currently, when reporting the size of a corporate bond transaction to TRACE, the number of bonds is reported and the TRACE System, which is programmed to reflect that one bond equals \$1,000 par value, calculates the total dollar volume of the transaction (e.g., 10 bonds × \$1,000=\$10,000).<sup>9</sup> Based on this reporting structure, the TAF is assessed on a per-bond basis, but the number of bonds is a proxy for the size of the total dollar volume of a transaction in \$1,000 increments. Although some Asset-Backed Securities are structured like conventional corporate bonds, many are structured differently. For example, many Asset-Backed Securities are based on financial assets that amortize, and the principal (or face) value declines over time. Accordingly, transactions in Asset-Backed Securities will not be reported to TRACE on a per-bond basis like conventional corporate bonds, but rather will be reported based on the original principal (or face) value of the underlying security or the Remaining Principal Balance.

Consequently, FINRA is proposing to conform the TAF rate for sales of Asset-Backed Securities consistent with the reporting of such transactions to TRACE. Accordingly, FINRA is proposing to base the TAF for sales of Asset-Backed Securities on the size of the transaction as reported to TRACE (i.e., par value, or, where par value is not used to determine the size of the transaction, the lesser of original face value or Remaining Principal Balance) at a rate of \$0.00000075 times the size of the transaction as reported to TRACE, with a maximum charge of \$0.75 per trade.

The effective date of the proposed rule change will be the date the proposed rule change SR-FINRA-2009-065 becomes effective, which is currently anticipated to be May 16, 2011.<sup>10</sup>

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

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

<sup>3</sup> See Securities Exchange Act Release No. 63751 (January 21, 2011), 76 FR 4966 ("Notice").

<sup>4</sup> See FINRA By-Laws, Schedule A, section 1 (describing how the TAF is applied).

<sup>5</sup> See FINRA Rule 6710(m) (defining "Asset-Backed Security").

<sup>6</sup> In addition to the TAF, the other member regulatory fees are the Gross Income Assessment and the Personnel Assessment.

<sup>7</sup> See FINRA By-Laws, Schedule A, section 1(b)(2).

<sup>8</sup> See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010). See also *Regulatory Notice* 10-23 (April 2010).

<sup>9</sup> See FINRA Rules 6730(c)(2) and 6730(d)(2).

<sup>10</sup> See Securities Exchange Act Release No. 63223 (November 1, 2010), 75 FR 68654 (November 8, 2010) (extending the operational date of SR-FINRA-2009-065 to no later than June 1, 2011).

<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.

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