

changes, NASD Rule 2370 regarding borrowing from or lending to customers into the FINRA consolidated rulebook as FINRA Rule 3240, and added record retention requirements. FINRA Rule 3240, like former NASD Rules 2370, focuses in general on the appropriateness of particular lending arrangements between FINRA member broker-dealers and their registered persons and customers (to the extent permitted by the member) and the potential for conflicts of interests between both the registered person and his or her customer and the registered person and the member with which he or she is associated.

Additionally, in SR-FINRA-2009-005,<sup>7</sup> FINRA renumbered cross-references in its rules from NYSE Rule 80A to NYSE Rule 132B on the basis of a New York Stock Exchange ("NYSE" or NYSE Euronext) rule proposal.<sup>8</sup> In that proposal, NYSE rescinded its Rule 80A regarding index arbitration [sic] restrictions and repositioned the definitions of "index arbitrage" and "program trading" into NYSE Rule 132B. Because BX Rule 6951 refers in its definitions of index arbitrage and program trading to Rule 80A, BX is, by this filing, updating the references in its Rule 6951 from NYSE Rule 80A to 132B.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Sections 6(b)(5) of the Act,<sup>10</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. The proposed changes will conform BX Rules 2360, 2361, 2370, and 6951 to recent changes made to several corresponding FINRA rules, to promote

among other things, adoption of NASD Rule 2370 as FINRA Rule 3240).

<sup>7</sup> See Securities Exchange Release No. 59432 (February 23, 2009), 74 FR 9121 (March 2, 2009)(SR-FINRA-2009-005)(notice of filing and immediate effectiveness).

<sup>8</sup> See Securities Exchange Release No. 56726 (October 31, 2007), 72 FR 62719 (November 6, 2007)(SR-NYSE-2007-96)(notice of filing and immediate effectiveness).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

application of consistent regulatory standards.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4 (f)(6) thereunder.<sup>12</sup>

At any time within 60 days of the filing of the 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-BX-2011-021 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.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4 (f)(6).

All submissions should refer to File Number SR-BX-2011-021. 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, 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-BX-2011-021, and should be submitted on or before May 4, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64253; File No. SR-EDGX-2011-09]

### 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

April 7, 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 April 6, 2011, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

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.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 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**

The Exchange proposes to reduce the rate on Flag T from \$0.0020 per share to \$0.0012 per share for routing using the ROUD/ROUE routing strategies, as defined in Rules 11.9(b)(3)(b) and 11.9(b)(3)(c)(i).

EDGX Exchange proposes to implement this amendment to the Exchange fee schedule on April 6, 2011.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>5</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 proposed reduced rate for Flag T (routing using ROUD/ROUE routing strategies) of \$0.0012 per share is an equitable allocation of reasonable dues, fees, and other charges. Lower fees are directly correlated with a higher number of intermediate low cost destinations as the more intermediate low cost destinations that there are, there is a greater potential for an execution at a lower cost destination before reaching a higher cost destination. For example, the ROUQ routing strategy, as defined in Rule 11.9(b)(3)(c)(iv),<sup>6</sup> routes to the lowest number of low cost destinations compared to the ROUD/ROUE<sup>7</sup> and ROUZ<sup>8</sup> routing strategies. As a result, the Exchange charges a higher fee for such strategy of \$0.0020 per share (flag Q). The ROUD/ROUE routing strategies route to a medium number of low cost destinations and the ROUZ routing strategy routes to the highest number of low costs destinations amongst these routing strategies. As a result, the Exchange will assess a proposed fee of \$0.0012 per share for the ROUD/ROUE routing strategies and assesses the lowest fee for the ROUZ routing strategy of \$0.0010 per share. The more low cost destinations that an order routes to allows the Exchange to pass on the savings it receives from such destinations to its members in lower fees. Therefore, it is equitable that ROUQ has the highest fee of \$0.0020 per share, while ROUD/ROUE has an intermediate fee of \$0.0012 per share, and ROUZ has the lowest fee of the three strategies of \$0.0010 per share. The Exchange also notes that a difference between ROUQ and ROUZ routing strategies is that the additional routing destinations in the ROUZ routing strategy are intermediate between the routing destinations in ROUQ. This also accounts for the differences in fees. Therefore, for each additional intermediate low cost destination that an order routes to, the prices of the strategies mentioned above (ROUQ, ROUD/ROUE, ROUZ) decrease accordingly.

The Exchange believes that the rate is reasonable when compared to other market centers using similar routing strategies. The comparable routing strategy to the ROUD/ROUE routing

strategies is Parallel D or Parallel 2D with the DRT (Dark routing technique) option on BATS BZX Exchange ("BATS"). BATS charges \$0.0020 per share for its DRT option. The Exchange believes that the proposed rebate is non-discriminatory in that it applies uniformly to all Members.

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>9</sup> and Rule 19b-4(f)(2)<sup>10</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.

<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> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> See SR-EDGX-2011-08 (April 1, 2011).

<sup>7</sup> The Exchange notes that ROUD/ROUE routing strategies route to the identical number of low cost destinations.

<sup>8</sup> See SR-EDGX-2011-08 (April 1, 2011). See Rule 11.9(b)(3)(c)(v).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 19b-4(f)(2).

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-2011-09 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-2011-09. 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>11</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-2011-09 and should be submitted on or before May 4, 2011.

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

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64269; File No. SR-ISE-2011-21]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to API Fees

April 8, 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 April 6, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange 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 ISE is proposing to amend its Schedule of Fees regarding the Exchange's API or login fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### 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.

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

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

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The ISE is proposing to amend its Schedule of Fees regarding the Exchange's API or login fees. ISE currently charges its members a fee for each login that a Member utilizes for quoting or order entry, with a lesser charge for logins used for the limited purpose of "listening" to broadcast messages.<sup>3</sup> The Exchange currently has the following categories of authorized logins: (1) Quoting, order entry and listening (allowing the user to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters and pulling quotes); (2) order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting parameters and pulling quotes (but not quoting)); and (3) listening (allowing the user only to query the system and to respond to broadcast messages).<sup>4</sup> The Exchange notes that quoting, order entry and listening are functionalities available only to Exchange market makers, i.e., Primary Market Makers and Competitive Market Makers, while order entry and listening are functionalities available only to non-market makers, i.e., Electronic Access Members.

ISE market makers currently receive an allocation of 1,300,000 quotes per day per user.<sup>5</sup> If a market maker submits more quotes than those allocated, i.e., 1,300,000 quotes per day per user as measured on average in a single month, the market maker is charged for additional users depending upon the number of quotes submitted. Each month, the total number of quotes submitted by a market maker across all bins (i.e., group of options to which the market maker is appointed), is divided by the number of trading days, resulting in the average quotes per day. This number is then divided by 1,300,000 and rounded up to the nearest whole number, resulting in an implied number of users based on quotes. Market makers are invoiced on a monthly basis for the greater of (a) the greatest number of users that logged into the system, or (b) the number of implied users based on quotes.

<sup>3</sup> See Exchange Act Release No. 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR-ISE-2006-09).

<sup>4</sup> *Id.*

<sup>5</sup> See Exchange Act Release No. 56721 (October 30, 2007), 72 FR 62502 (November 5, 2007) (SR-ISE-2007-91).