

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 10:00 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-Phlx-2013-117 and should be submitted on or before January 8, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71058; File No. SR-EDGX-2013-46]

### 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

December 12, 2013.

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 December 6, 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 Members<sup>3</sup> of the Exchange pursuant to EDGX Rule 15.1(a) and (c) ("Fee Schedule") to exclude odd lot transactions from its definition of Total Consolidated Volume ("TCV"), which is used to determine whether a Member is eligible for certain pricing tiers. The text of the proposed rule change is available on the Exchange's Web site at [www.directedge.com](http://www.directedge.com), at the Exchange's principal office, on the Commission's Web site at [www.sec.gov](http://www.sec.gov), 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 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 currently defines TCV as "the volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month in which the fees are calculated."<sup>4</sup> An odd lot transaction, which is generally an execution of less than 100 shares,<sup>5</sup> is currently not reported to the consolidated tape, and therefore, not included in the Exchange's calculation of TCV. Beginning December 9, 2013, odd lot transactions will be reported to the

<sup>3</sup> The term "Member" is defined as "any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act." See Exchange Rule 1.5(n).

<sup>4</sup> See Exchange Fee Schedule available at <http://www.directedge.com/Trading/EDGXFeeSchedule.aspx> (December 2, 2013)

<sup>5</sup> See Exchange Rule 11.6.

consolidated tape.<sup>6</sup> The Exchange, therefore, proposes to amend its Fee Schedule to exclude odd lot transactions from its definition of TCV, which is used to determine whether a Member is eligible for certain pricing tiers, through January 31, 2014. The proposal would allow Members additional time to adjust to the potential impact of including odd lot transactions within consolidated volumes. Odd lots will continue to be included in each Member's average daily trading volume ("ADV") as they are today.

The Exchange provides Members with the opportunity to qualify for a pricing tier based on its [sic] level of activity during a particular month. Each tier provides a Member with increased rebates or lower fees for adding or removing liquidity in the Exchange. Certain tiers use a specific percentage of TCV during the billing cycle as a threshold that a Member must meet or exceed to qualify for a particular tier. For example, to qualify for the Mega Tier 2 and receive a rebate of \$0.0032 per share and fee of \$0.0029 per share, a Member must: add or route at least 4,000,000 shares of ADV prior to 9:30 a.m. or after 4:00 p.m. (includes all flags except 6); and add a minimum of 0.20% of the TCV on a daily basis measured monthly, including during both market hours and pre and post-trading hours. To qualify for Market Depth Tier 1 and receive a rebate of \$0.00325 per share, a Member must: add greater than or equal to 0.85% of the TCV in ADV on EDGX in total; and add at least 4 million shares as Non-Displayed Orders that yield Flag HA.

The proposal to exclude odd lot transactions from the TCV calculation is intended to allow Members additional time to adjust to the potential impact of including odd lot transactions within

<sup>6</sup> See Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05) (Order Approving the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan). See also Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7-24-89) (Order Approving Amendment No. 30 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis). See also Securities Exchange Act Release No. 70898 (November 19, 2013) (SR-NYSE-2013-75). See also announcements regarding December 9, 2013 implementation date, available at <https://cta.nyxdata.com/cta/popup/news/2385> and <http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-11>. If the inclusion of odd lot transactions in the consolidated tape is delayed to a date after December 9, 2013, the manner of inclusion or exclusion of odd lot transactions described in this proposal for purposes of billing on the Exchange would similarly take effect on such later date.

<sup>32</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.

consolidated volumes. The proposed rule change is not intended to address any other issues and the Exchange is not aware of any problems that Members would have in complying with the proposed rule change.

#### Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on December 9, 2013. The amendments would be effective through January 31, 2014.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>8</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 its proposal to exclude odd lot transactions from its TCV calculation is reasonable because it allows the Exchange to maintain, albeit temporarily, the status quo when measuring a Member's activity and whether they [sic] satisfy the criteria necessary to achieve preferred pricing under each pricing tier. Absent this change, the denominator of tier threshold calculation (*i.e.*, TCV) would increase immediately when odd lot transactions begin to be reported to the consolidated tape and a Member would need to immediately increase their [sic] own activity (*i.e.*, the numerator) to continue to qualify for the tier. However, such an increase in the Member's activity would not result in a corresponding benefit to the Member because the Exchange is not proposing to change the tier rates. The Exchange anticipates that the eventual impact on determining tier qualifications would be minimal when odd lot transactions begin to be included in the TCV. Nonetheless, the Exchange believes that it is reasonable to provide Members with a limited transition period to adapt to such impact.

The proposed rule change is also equitable and not unfairly discriminatory because it would apply to all Members uniformly. In addition, the inclusion of odd lots in the TCV calculation would occur for all Members on February 1, 2014, after the same nearly two month transition period.

#### 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. The Exchange does not believe that this change represent [sic] a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. The proposed rule change is designed to provide consistency to Members by allowing the Exchange to maintain, albeit temporarily, the status quo when measuring a Member's activity and whether they [sic] satisfy the criteria necessary to achieve preferred pricing under each pricing tier. The proposal to exclude odd lot transactions from the TCV calculation is intended to allow Members additional time to adjust to the potential impact of including odd lot transactions within consolidated volumes. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

This proposed rule change is also designed to maintain intermarket competition by eliminating the potential for Members to immediately fail to qualify for a tier due to the inclusion of odd lot transactions in the consolidated tape beginning December 9, 2013. Other exchanges have also announced their intention of [sic] filed proposed rule changes to exclude odd lot transactions from the consolidated volume calculations from December 9, 2013 thru [sic] January 31, 2014.<sup>9</sup> The proposal is also designed to maintain intramarket completion by maintaining consistent calculations amongst exchanges.

#### 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

<sup>9</sup> See File No. SR-NYSE-2013-78 (proposal by the New York Stock Exchange, Inc. ("NYSE") to amend its price list to exclude odd lot transactions from its consolidated average daily trading volume calculations thru January 31, 2014); see also, BATS Exchange, Inc. and BATS-Y Exchange, Inc. Tier Calculation Update available at [http://cdn.batstrading.com/resources/fee\\_schedule/BATS-BZX-Exchange-and-BYX-Exchange-Tier-Calculation-Update-Effective-December-9-2013.pdf](http://cdn.batstrading.com/resources/fee_schedule/BATS-BZX-Exchange-and-BYX-Exchange-Tier-Calculation-Update-Effective-December-9-2013.pdf) (announcing intention to exclude odd lot transactions from its consolidated average daily trading volume calculations thru [sic] January 31, 2014).

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)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</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 proposal 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2013-46 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-2013-46. This file number should be included on the subject line if email 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, 100 F Street NE.,

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4 (f)(2).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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-2013-46 and should be submitted on or before January 8, 2014.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71063; File No. SR-CBOE-2013-116]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

December 12, 2013.

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 December 9, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, 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 Exchange 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 Exchange 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 amend its Fees Schedule with regard to the quoting bandwidth allowance for Market-Makers. The Fees Schedule states that the bandwidth allowance for a Market-Maker Trading Permit is equivalent to a maximum of 31,200,000 quotes over the course of a trading day. However, in reaching the 31,200,000 quotes number, CBOE only took into account the normal trading hours for equity options (8:30 a.m.–3:00 p.m. (all times herein are Central)) and erroneously failed to account for the fact that index and ETP options trading is open until 3:15 p.m. (an extra 15 minutes). Therefore, the Exchange's quoting bandwidth allowance for index and ETP options is actually greater than the 31,200,000 quotes listed in the Fees Schedule. In order to account for this error, the Exchange proposes to amend the Fees Schedule to delete the 31,200,000 number and replace it with 32,400,000 (which accounts for the extra 15 minutes).

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>3</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>4</sup> requirements that the rules of an exchange be 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that amending the Fees Schedule to more accurately reflect the Market-Maker Trading Permit quoting bandwidth allowance (taking into account the extra fifteen minutes that index and ETP options are traded) shall alleviate confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. The proposed change applies equally to all Market-Maker Trading Permits.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is merely making a correction. Further, the new 32,400,000 quotes amount applies to all Market-Maker Trading Permits. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is merely a correction, not a competitive change, and only applies to trading on CBOE.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

<sup>12</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.

<sup>3</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> *Id.*