

competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGX Last Sale and EDGX Top compete with a number of alternative products. For instance, EDGX Last Sale and EDGX Top do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to EDGX last sale prices and top-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGX Last Sale and EDGX Top, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or

subscriber would achieve through the purchase.

#### Non-Substantive, Corrective Changes

The proposed non-substantive, corrective changes to the fee schedule will not have any impact on completion. The proposed changes are designed to clarify the fee schedule and avoid potential investor confusion.

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

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

#### **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>31</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>32</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2015-28 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-EDGX-2015-28. 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/>)

<sup>31</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>32</sup> 17 CFR 240.19b-4(f).

*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., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2015-28, and should be submitted on or before August 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority,<sup>33</sup>

**Brent J. Fields,**  
*Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-75390; File No. SR-EDGA-2015-26]

#### **Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of EDGA Exchange, Inc.**

July 8, 2015.

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 June 26, 2015, EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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 Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the

<sup>33</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.

Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to EDGA Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](http://www.batstrading.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 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 parts 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 Fee Schedule to modify its fees for physical connectivity. A physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently maintains a presence in two third-party data centers: (i) The primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. The

Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$500 per physical port that connects to the System<sup>6</sup> via 1 gigabyte copper circuit; \$1,000 per physical port that connects to the System via 1 gigabyte fiber circuit; and \$2,000 per physical port that connects to the System via 10 gigabyte fiber circuit.

The Exchange now proposes to amend its physical connectivity fees to align the Exchange's fees with its affiliates.<sup>7</sup> First, the Exchange proposes to amend its Fee Schedule to no longer distinguish between fiber and copper circuits. Therefore, it proposes to delete the charge of \$500 per month per physical port that connects to the System via 1 gigabyte copper circuit and to assess a monthly fee of \$2,000 per physical port that connects to the System via 1 gigabyte circuit regardless of the type of connection. Second, the Exchange proposes to increase the fee per physical port that connects to the System via 10 gigabyte circuit from \$2,000 per month to \$4,000 per month. The Exchange also proposes to replace the reference to "fiber" with "physical port" within the description of the 1 gigabyte and 10 gigabyte physical connectivity fees as it proposes to no longer distinguish between fiber and copper circuits within its Fee Schedule.

Lastly, to further align its physical connectivity fees with its affiliates, the Exchange proposes to pass through in full any hardware costs or connectivity fees incurred that are directly related to completing a cross-connect where the expense to the Exchange billed by a third party exceeds \$1,000.<sup>8</sup> The Exchange proposes to pass through the expense as an alternative to the flat installation fees charged by the Exchange's primary competitors. The Exchange does not anticipate that passing through these expenses will affect many of the Exchange's constituents, because the majority of cross-connect completions cost less than

<sup>6</sup> The term "System" is defined as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." See Exchange Rule 1.5(cc).

<sup>7</sup> The Exchange's affiliates are EDGX Exchange, Inc. ("EDGX"), BATS Y-Exchange, Inc. ("BYX") and BATS Exchange, Inc. ("BZX", together with the Exchange, EDGX and BYX, the "BATS Exchanges"). The Exchange notes that each of its affiliates will also file proposed rule changes with Commission to adopt similar physical connectivity fees to be effective July 1, 2015.

<sup>8</sup> See BZX fee schedule available at [http://batstrading.com/support/fee\\_schedule/bzx/](http://batstrading.com/support/fee_schedule/bzx/) and the BYX fee schedule available at [http://batstrading.com/support/fee\\_schedule/byx/](http://batstrading.com/support/fee_schedule/byx/).

\$1,000. For this reason, the Exchange proposes to pass-through the charges associated with cross-connect completions that cost more than \$1,000 rather than to charge an installation fee for all completions regardless of their cost.

#### Implementation Date

The Exchange proposes to implement this amendment to its Fee Schedule on July 1, 2015.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>10</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 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.

The Exchange believes that the proposal represents an equitable allocation of reasonable dues, fees, and other charges as its fees for physical connectivity are reasonably constrained by competitive alternatives. If a particular exchange charges excessive fees for connectivity, affected Members and non-Members may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any

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

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

<sup>5</sup> The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

exchange to charge unreasonable fees for connectivity.

Furthermore, 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 will enable it to cover its increased infrastructure costs associated with establishing physical ports to connect to the Exchange's Systems. The additional revenue from the increased fees will also enable the Exchange to continue to maintain and improve its market technology and services. The Exchange believes that the proposed fees for 1 gigabyte circuit of \$2,000 per month and for 10 gigabyte circuit of \$4,000 per month are reasonable in that they are less than analogous fees charged by the Nasdaq Stock Market LLC ("Nasdaq"), which are \$2,500 per month for 1 gigabyte connectivity and range from \$10,000—\$15,000 per month for 10 gigabyte circuits.<sup>11</sup> In addition, the Exchange proposed physical connectivity fees are designed to align the Exchange's fees with its affiliates.<sup>12</sup>

The Exchange also believes that passing through the cross-connect related expenses in excess of \$1,000 as an alternative to the flat installation fees is equitable and reasonable. The proposed pass through would be in lieu of the flat installation fees charged by the Exchange's primary competitors. The Exchange does not anticipate that passing through these expenses will affect many of the Exchange's constituents, because the majority of cross-connect completions cost less than \$1,000.

Finally, the Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly 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. All Exchange Members that voluntarily select various service options will be charged the same amount for the same services. As is true of all physical connectivity, all Members and non-Members have the option to select any connectivity option, and there is no differentiation with regard to the fees charged for the service.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not

necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including port fee access, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The proposal to increase the fees for physical connectivity would bring the fees charged by the Exchange closer to similar fees charged for physical connectivity by other exchanges.<sup>13</sup> In addition, the proposal to pass through cross-connect installation related expenses serves as an alternative to the flat installation fees charged by the Exchange's primary competitors.

Lastly, the proposed rule change does not impose any burden on intramarket competition as the fees are uniform for all Members and non-Members. The Exchange notes that 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.

#### (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)(A) of the Act<sup>14</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>15</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGA-2015-26 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-EDGA-2015-26. 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., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also 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-EDGA-2015-26 and should be submitted on or before August 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Brent J. Fields,  
Secretary.

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<sup>11</sup> See Nasdaq Rule 7034(b).

<sup>12</sup> See *supra* note 7.

<sup>13</sup> See *supra* note 11.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).