SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67607; File No. SR-EDGA-2012-35)

August 7, 2012

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA 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 August 1, 2012 the 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 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[3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet website at http://www.directedge.com, at the Exchange's principal office, 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

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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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to append Footnote 18 to its standard rebate of $0.0003 per share for adding liquidity on the EDGA fee schedule to add the Step Up Tier. The Exchange also proposes to append Footnote 18 to Flags B, V, Y, 3, and 4 to signify a potential rate change should the Member meet the criteria of the Step Up Tier. Members may qualify for a rebate of $0.0005 per share on their displayed shares (Flags B, V, Y, 3, and 4) for adding liquidity to EDGA if the Member, on a daily basis, measured monthly, posts 0.10% of the Total Consolidated Volume ("TCV")[4] in Average Daily Volume ("ADV") more than their July 2012 ADV added to EDGA.

Because the Exchange can now differentiate non-displayed orders that add liquidity using the Mid Point Discretionary Order type[5] (Flag DM) from non-displayed orders that remove liquidity using the Mid Point Discretionary Order type (Flag DT),[6] the Exchange proposes to count the volume generated from Flags DM and DT toward the volume threshold in Footnote 2

4 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 for the month prior to the month in which the fees are calculated.

5 See Securities Exchange Act Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2012) (SR-EDGA-2012-22).

6 See Securities and Exchange Act Release No. 67380 (July 10, 2012), 77 FR 41847 (July 16, 2012) (SR-EDGA-2012-29) (where the Exchange provided additional transparency to Members by bifurcating then existing Flag DM into two flags: Flag DM (adds liquidity in the discretionary range) and Flag DT (removes liquidity in the discretionary range)).

since Flags DM and DT represent a non-displayed order type. Therefore, where a Member adds or removes liquidity using non-displayed (hidden) orders, a Member is charged a rate of $0.0010 per share for Flags HA or HR, contingent upon a Member adding or removing greater than 1,000,000 shares hidden on a daily basis, measured monthly (where the volume generated from Flags HA, HR, DM and DT count towards this tier) or a Member posting greater than 8,000,000 shares on a daily basis, measured monthly. Members not meeting either minimum will be charged $0.0030 per share for Flags HA or HR. The Exchange proposes to make conforming amendments to the text of Footnote 2. The Exchange notes that it will continue to charge Members a rate of $0.0005 per share for non-displayed orders that add liquidity using Mid Point Discretionary Orders that yield Flag DM and $0.0005 per share for non-displayed orders that remove liquidity using Mid Point Discretionary Orders that yield Flag DT.

The Exchange proposes to delete Footnote 4 that is appended to Flag HA in order to clarify for Members that the volume from Flag HA counts towards achieving the tiered pricing in Footnote 4 and the rate for Flag HA does not change where a Member achieves the thresholds outlined in Footnote 4. The Exchange notes that these proposed changes do not modify the Exchanges existing treatment of Flag HA. This amendment supports the Exchange's efforts to annotate flags with footnotes to signify a potential rate change, rather than annotating every flag to denote which flags contribute towards the volume threshold and/or conditions necessary to achieve a potential rate change. Accordingly, the Exchange also proposes to add conforming language to Footnote 4 that indicates to Members that the rebate of $0.0004 per share applies to Flags B, V, Y, 3 and 4, which is already indicated on the fee schedule by the Exchange having appended Footnote 4 to these flags.

In SR-EDGA-2012-29, the Exchange proposed to pass-through the rates for routing orders to the Nasdaq OMX PSX (the "PSX") on Flags K and RS.[7] Accordingly, in response to the proposed pricing changes in the PSX's pending filing with the Securities and Exchange Commission, which is effective August 1, 2012, the Exchange proposes to amend the fees for Flags K and RS in response to the PSX's proposed fee changes.[8] The Exchange proposes to increase the rate for Flag K from $0.0005 per share to $0.0027 per share. The Exchange also proposes to change the rate for Flag RS from a charge of $0.0005 per share to a rebate of $0.0016 per share.

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

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] 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 append Footnote 18 to its standard rebate of $0.0003 per share for adding liquidity on the EDGA fee schedule and Flags B, V, Y, 3, and 4 to add the Step Up Tier where Members may qualify for a rebate of $0.0005 per share on their displayed shares (Flags B, V, Y, 3, and 4) for liquidity added to EDGA if the Member on a daily basis, measured

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7 See Securities and Exchange Act Release No. 67380 (July 10, 2012), 77 FR 41847 (July 16, 2012) (SR-EDGA-2012-29).

8 See NASDAQ OMX PSX, Price List – Trading and Connectivity, http://www.nasdaqtrader.com/Trader.aspx?id=PSX_pricing.

9 15 U.S.C. 78f.

10 15 U.S.C. 78f(b)(4).

monthly, posts at least 0.10% of the TCV in ADV more than their July 2012 ADV added to EDGA. The Exchange believes a rebate of $0.0005 per share for adding liquidity versus the default rebate of $0.0003 per share represents an equitable allocation of reasonable dues, fees, and other charges since higher rebates reward higher liquidity provision commitments by Members. For example, in order for a Member to qualify for the Step Up Tier rebate of $0.0005 per share, the Member must add on a daily basis, measured monthly, 0.10% of the TCV in ADV more than their July 2012 ADV. The Exchange created a baseline of July 2012 ADV in order to reward a Member's growth pattern in providing liquidity beyond a designated benchmark. The Exchange believes that offering Members a higher rebate will incentivize liquidity. Such increased volumes increase potential revenue to the Exchange, and allows the Exchange to spread its administrative and infrastructure costs over a greater number of shares, which results in lower per share costs. The Exchange may then pass on these savings to Members in the form of higher rebates. The increased liquidity also benefits all investors by deepening EDGA'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 Step Up Tier have been widely adopted in the cash equities markets,[11] and are equitable because volume-based rebates 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

[11] See Nasdaq's Investor Support Program where Nasdaq rewards a member's growth pattern in tiers 1, 2 and 3 based on a defined benchmark. See NASDAQ, Price List – Trading and Connectivity, http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2. See also NYSE Arca's Step Up tier where NYSE Arca rewards a member's growth pattern based on a defined benchmark. See NYSE Arca, NYSE Arca Equities Trading Fees, http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees.

provision and introduction of higher volumes of orders into the price and volume discovery process. Lastly, the Exchange believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

In Footnote 4 of the fee schedule, the Exchange notes that it currently offers a $0.0004 per share rebate for Members that, on a daily basis, measured monthly, posts more than 1% of the TCV in average daily volume on EDGA, including non-displayed orders that add liquidity. Secondly, a Member, on a daily basis, measured monthly, that posts more than .25% of the TCV on EDGA, including non-displayed orders that add liquidity, and removes more than .25% of TCV in average daily volume, will also qualify for the rebate of $0.0004 per share in Footnote 4. The Exchange believes that the $0.0005 per share rebate in the Step Up assigns a higher value to and rewards a Member's growth pattern over a designated benchmark in a way that attracts new liquidity to the market and is distinctly different from the volume-based tier in Footnote 4. Such increased volume from a Member's growth over said designated benchmark and the resulting liquidity to the market 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 higher rebates. The increased liquidity also benefits all investors by deepening EDGA'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. Offering rebates that reward growth patterns such as the ones 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 SR-EDGA-2012-29, the Exchange bifurcated Flag DM into Flags DM and DT to promote market transparency and improve investor protection by adding additional transparency to its fee schedule in order to more precisely delineate for Members whether they were “adders of liquidity” or “removers of liquidity” for purposes of Members’ non-displayed orders using the Mid Point Discretionary order type. Similarly, the Exchange believes that counting the volume generated from Flags DM and DT toward the volume threshold in Footnote 2 is reasonable and equitable given that the Exchange can now differentiate between non-displayed orders that add liquidity in the discretionary range from non-displayed orders that remove liquidity in the discretionary range, as explained above. Including Flags DM and DT in Footnote 2 allows their associated volume to be tracked by the Exchange in the appropriate tier(s), which may incent Members to increase use of the volume tiers in the fee schedule. Such volume will increase 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 higher rebates/lower costs. The increased liquidity also benefits all investors by deepening EDGA’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. The Exchange also believes that the proposed change is non-discriminatory because it applies uniformly to all Members.

The Exchange proposes to delete Footnote 4 that is appended to Flag HA because the volume from Flag HA counts towards achieving the tiered pricing in Footnote 4 and the rate for

Flag HA does not change where a Member achieves the thresholds outlined in Footnote 4. The Exchange believes this amendment to Flag HA supports the Exchange's effort to achieve consistent application among the flags on the fee schedule and provide transparency for its Members. In addition, this amendment supports the Exchange's efforts to annotate flags with footnotes to signify a potential rate change, rather than annotating every flag to denote which flags contribute towards the volume threshold and/or conditions necessary to achieve a potential rate change. Accordingly, the Exchange also proposed to add conforming language to Footnote 4 that indicates to Members that the rebate of $0.0004 per share applies to Flags B, V, Y, 3 and 4, as was already indicated by appending Footnote 4 to these flags on the fee schedule. The Exchange also believes that these proposed amendments are non-discriminatory because they apply to all Members.

The Exchange proposes to amend the fees for Flags K and RS in response to the proposed pricing changes in the PSX's pending filing with the Securities and Exchange Commission, which is effective August 1, 2012, where the PSX proposed a range of fees and rebates for Tape A and Tapes B and C securities. At this time, the PSX passes through applicable fees and/or rebates to DE Route, which, in turn, passes through the applicable fees and/or rebates to the Exchange. In response to the PSX's pending filing, the Exchange proposes to increase the rate for Flag K from $0.0005 per share to $0.0027 per share, and the rate for Flag RS from a charge of $0.0005 per share to a rebate of $0.0016 per share. Because the Exchange's fee schedule currently does not differentiate between Tape A and Tapes B and C securities that are routed to the PSX in Flags K and RS and the Exchange cannot mirror the new PSX fees associated with each tape, the Exchange proposes assessing its Members the highest fee and the lowest rebate associated with the PSX's pending filing for all tapes for ease of administration and to prevent potential arbitrage. The Exchange also notes that routing through DE Route is voluntary. The Exchange believes this represents an equitable allocation of reasonable dues, fees and other charges since it reflects the pass-through of these fees from the PSX. In addition, the Exchange believes that it is reasonable and equitable to pass-through certain fees to its Members. The Exchange also believes that the proposed pass-through of fees is non-discriminatory because it applies 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. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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. <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

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[12] and Rule 19b-4(f)(2)[13] 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. Please include File Number SR-EDGA-2012-35 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-EDGA-2012-35. 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

12 15 U.S.C. 78s(b)(3)(A).

13 17 CFR 19b-4(f)(2).

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-EDGA-2012-35 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill
Deputy Secretary

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[14] 17 CFR 200.30-3(a)(12).