Act,[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. Specifically, the Exchange believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of BATS equity and options market data along with information regarding the Exchange's internal latencies.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

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 [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BATS requests that the Commission waive the 30-day operative delay in order to allow BATS to continue to provide without interruption the Data Feeds that are already available, voluntary, and free to subscribers. In addition, BATS requests waiver of the 30-day operative delay for the Latency Feed because it is ready for distribution, voluntary, free to receive, and contains only aggregate statistical information related to the latency of the System. BATS believes that waiver of the operative delay will allow it to continue providing market participants that use the Data Feeds with useful real-time and historical data concerning orders that have been entered, executions that have occurred, and the latency of the system, consistent with other products provided by other exchanges. The Commission believes that waiving the 30-day operative delay [15] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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–BATS–2011–017 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–BATS–2011–017. 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,[16] 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 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–BATS–2011–017 and should be submitted on or before June 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11767 Filed 5–12–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64452; File No. SR–EDGX–2011–13]

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

May 10, 2011.

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 April 29, 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

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BATS has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] *Id.*

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 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

For customer internalization (*i.e.,* same MPID),[4] currently there is no charge nor rebate. This was because when the Exchange launched in July 2010 the rebate for adding liquidity ($0.0029 per share) was offset by the fee for removing liquidity ($0.0029 per share). This situation yields Flag "E." During the Pre-Opening and Post-Closing sessions, there are also no charges nor rebates, but this situation yields Flag "5" per side of an execution (adding liquidity/removing liquidity). The Exchange is now proposing to charge $0.0001 per share per side of an execution (for adding liquidity and for removing liquidity) for Flags E and 5 instead of the standard or tiered rebate/removal rates. Therefore, Members would incur a total transaction cost of $0.0002 per share for both sides of an execution for customer internalization.

Currently, orders that add liquidity to Midpoint Match ("MPM") [5], a fee of $0.0010 per share is charged and a flag "MM" is yielded. For orders that remove liquidity from MPM, a fee of $0.0010 per share is charged for removing liquidity from MPM and yield flag "MT." In both cases, the Exchange is proposing to increase these fees to $0.0012 per share.

Currently, Members can qualify for the Mega Tier rebate of $0.0033 per share for all liquidity posted on EDGX if they add or route 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 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. In addition, for meeting the aforementioned criteria, Members will pay a reduced rate for removing liquidity of $0.0029 for Flags N, W, and 6.

The Exchange is proposing to amend the above Mega Tier rebate by increasing the rebate to $0.0034 per share, decreasing the amount needed to add or route to 4,000,000 shares of average daily volume during the pre and post markets from 5,000,000 shares, and increasing from 25,000,000 to 38,000,000 the number of shares of average daily volume ("ADV") on EDGX required to be added during both market hours and pre and post-trading hours. The amended rebate would thus read as follows: Members can qualify for the Mega Tier and be provided a rebate of $0.0034 per share for all liquidity posted on EDGX if they add or route at least 4,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6) AND add a minimum of 38,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours. In addition, for meeting the aforementioned criteria, Members will pay a reduced rate for removing liquidity of $0.0029 for Flags N, W, and 6.

Finally, the Exchange is proposing to make a technical correction to the fee schedule to replace the term "order type" with "routing strategy" throughout the fee schedule in order to conform to language in Rule 11.9(b)(3). These amendments will appear in the text for Flags K, L, Q, T, Z, 2, 8, 9, BY, CL, SW, and footnote 8.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on May 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] 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 increased fee for customer internalization of $0.0001 per share per side of an execution for both Flags E (regular trading session) and 5 (pre and post market) represents an equitable allocation of reasonable dues, fees, and other charges as it is designed to introduce a nominal and reasonable fee for members who inadvertently match with one another, thereby discouraging potential wash sales. The increased fee also allows the Exchange to offset its administrative, clearing, and other operating costs incurred in executing such trades. Finally, the fee is equitable in that it is in line with the EDGX fee structure which currently has a maker/taker spread of $0.0007 per share (the standard rebate to add liquidity on EDGX is $0.0023 per share, while the standard fee to remove liquidity is $0.0030 per share). EDGX also has a variety of tiered rebates ranging from $0.0023–$0.0034 per share (as proposed), which makes its maker/taker spreads range from $.0007 (standard add–standard removal rate), $0 (standard removal rate–Super Tier rebate), −$0.0001, (standard removal rate–Ultra Tier rebate) −$0.0002 (standard removal rate–Mega Tier rebate of $0.0032), and −$.0004 (standard removal rate–proposed Mega Tier rebate of $0.0034 per share). As a result of the customer internalization charge, Members who internalized would be charged $0.0001 per share per side of an execution (total of $0.0002 per share) instead of capturing the maker/taker spreads resulting from achieving the tiered rebates, as described above.

As mentioned above, when the Exchange launched in July 2010, the maker/taker spread was zero (0). This increased fee per side of an execution ($.0001 per side instead of free), yielding a total cost of $0.0002, thus brings the internalization fee in line with the current maker/taker spreads.[8] The Exchange believes that the

[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.

[4] This occurs when two orders presented to the Exchange from the same Member (*i.e.,* MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another. Members are advised to consult Rule 12.2 respecting fictitious trading.

[5] As defined in EDGX Rule 11.5(c)(7).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] The Exchange will work promptly to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread.

proposed rate is non-discriminatory in that it applies uniformly to all Members.

The Exchange believes that the proposed increased fees from $0.0010 per share to $0.0012 per share for the "MT" flag for removing liquidity from MPM and to the "MM" flag for adding liquidity to MPM represent an equitable allocation of reasonable dues, fees, and other charges as such increased fees offset the Exchange's administrative and other operational costs.

The $0.0012 per share rate for the MT flag is a modest rate increase for an already low cost order type (MPM) within EDGX. Such rate is competitive and superior to comparable exchange standard removal rates of $0.0030 per share (Nasdaq), $0.0030 per share (NYSE Arca), $0.0023 per share (NYSE), and $0.0028 per share (BATS BZX). The fee is also equitable as it is competitive with other fees assessed for routing strategies that access low cost destinations, such as ROUZ, as defined in Rule 11.9(b)(3)(c)(v) (yields Flag Z, $0.0010 per share) and ROUD/ROUE, as defined in Rules 11.9(b)(3)(b) and 11.9(b)(3)(c)(i) (Flag T, $0.0012 per share).

The increased fee for the "MM" flag of $0.0012 per share also represents a modest increase to an already low cost order type within EDGX. The EDGX MPM liquidity providers ("MM flag") will pay a premium of $0.0012 per share to interact with liquidity seekers ("MT flag") looking to access low cost liquidity in MPM, who in turn will pay a fee of $0.0012 per share. Finally, the rate is reasonable when compared to similar fees assessed by EDGA Exchange to add hidden liquidity (non-displayed orders) ($0.0010 per share provided certain volume thresholds are met). The rate is also reasonable when compared to rebates on Nasdaq for adding liquidity using non-displayed orders, of $0.0010 or $0.0015, depending on if a tier is met. The Exchange believes that the proposed rates are non-discriminatory in that they apply uniformly to all Members.

The proposed Mega tier rebate proposed ($0.0034 per share for all liquidity posted on EDGX if Members add or route at least 4,000,000 shares of average daily volume prior to 9:30 AM or after 4:00 PM AND add a minimum of 38,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours) represents an equitable allocation of reasonable dues, fees, and other charges since higher rebates are directly correlated with more stringent criteria.

The proposed Mega Tier rebate of $0.0034 (currently $0.0033 per share) and the alternative current Mega Tier rebate of $0.0032 per share have the most stringent criteria associated with them, and are $0.0003/$0.0001 greater than the Ultra Tier rebate ($0.0031 per share) and $0.0004/$0.0002 greater than the Super Tier rebate ($0.0030 per share).

For example, based on average TCV for March 2011 (8.0 billion), in order for a Member to qualify for the proposed Mega Tier rebate of $0.0034, the Member would have to add or route at least 4,000,000 shares of average daily volume during pre and post-trading hours and add a minimum of 38,000,000 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. In addition, 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 non-discriminatory 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.

Another way a Member can qualify for the current Mega Tier (with a rebate of $0.0032 per share) would be to post 0.75% of TCV. Based on average TCV for March 2011 (8.0 billion), this would be 60 million shares on EDGX. A second method 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.

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 March 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 of $0.0030 per share, 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 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 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. 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 [9] and Rule 19b–4(f)(2) [10] thereunder. At any time within 60 days

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

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–EDGX–2011–13 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–2011–13. 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,[11] 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–2011–13 and should be submitted on or before June 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11763 Filed 5–12–11; 8:45 am]

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[11] The text of the proposed rule change is available on the 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.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64446; File No. SR–Phlx–2011–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to the Options Floor Broker Subsidy

May 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 29, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") 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 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 Section VIII of its Fee Schedule titled the "Options Floor Broker Subsidy."

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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 purpose of the proposed rule change is to: (i) Eliminate the threshold requirement that a member organization with Exchange registered floor brokers must have more than an average of 100,000 executed contracts per day in the applicable month; (ii) amend the computation for eligible contracts; and (iii) amend the eligible contracts per tier and monthly volume subsidy payments. The Exchange believes that the proposed amendments could enable a member organization to receive a higher subsidy because the Exchange is changing from a daily average to a monthly total calculation to determine the number of contracts traded.

Eliminating a Threshold

The Exchange currently pays an Options Floor Broker Subsidy to member organizations with Exchange registered floor brokers that enter eligible contracts into the Exchange's Floor Broker Management System ("FBMS").[3] To qualify for the per contract subsidy, a member organization with Exchange registered floor brokers must have more than 100,000 average executed contracts per day in the month ("100,000 contract threshold").[4] Only the volume from orders entered by floor brokers into FBMS and subsequently executed on the Exchange qualifies. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FBMS is designed to enable floor brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by floor brokers on the Exchange. *See* Exchange Rule 1080, commentary .06.

[4] For purposes of calculating the 100,000 threshold, customer-to-customer transactions, customer-to-non-customer transactions, and non-customer-to-non-customer transactions are currently included.